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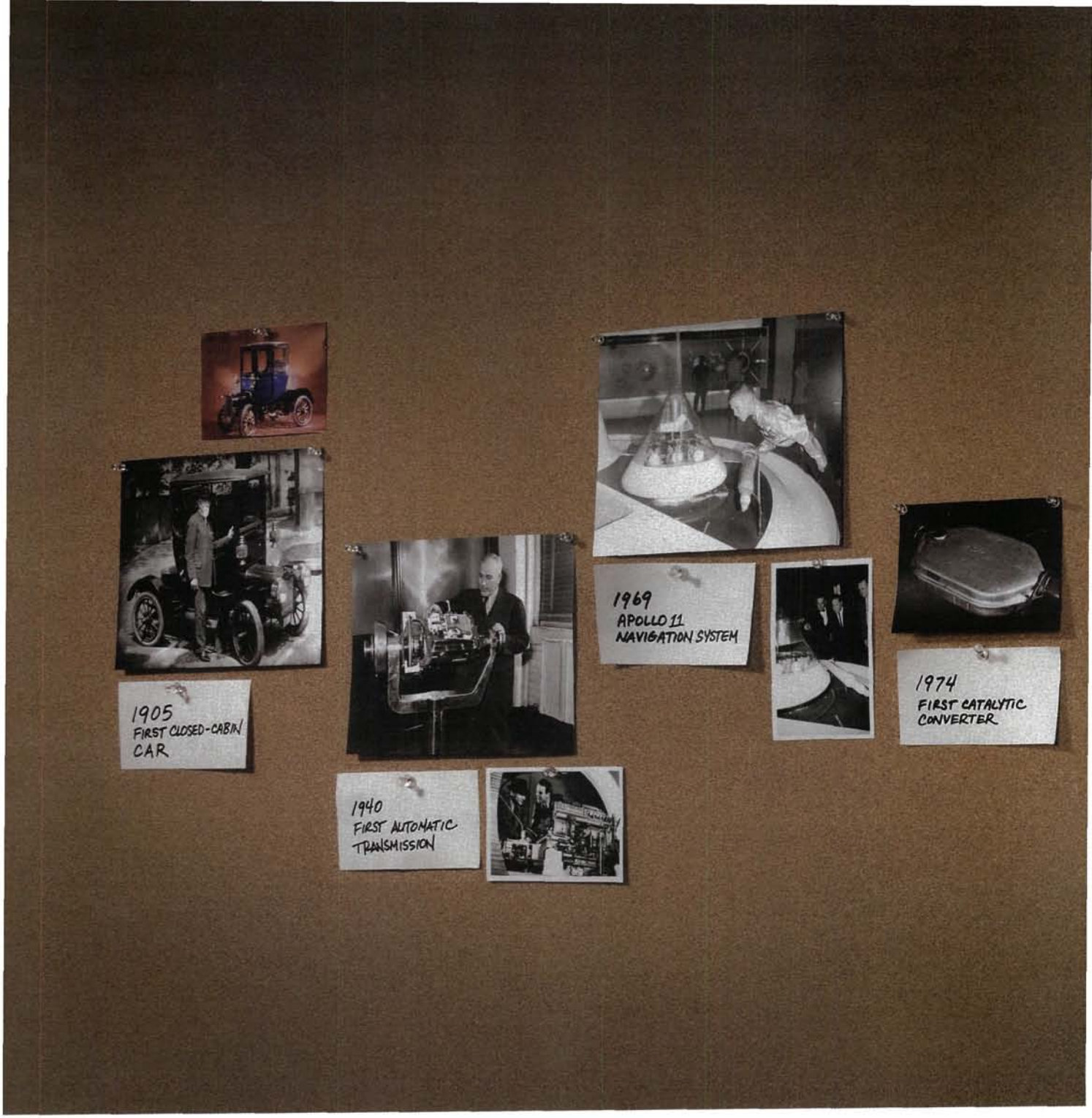

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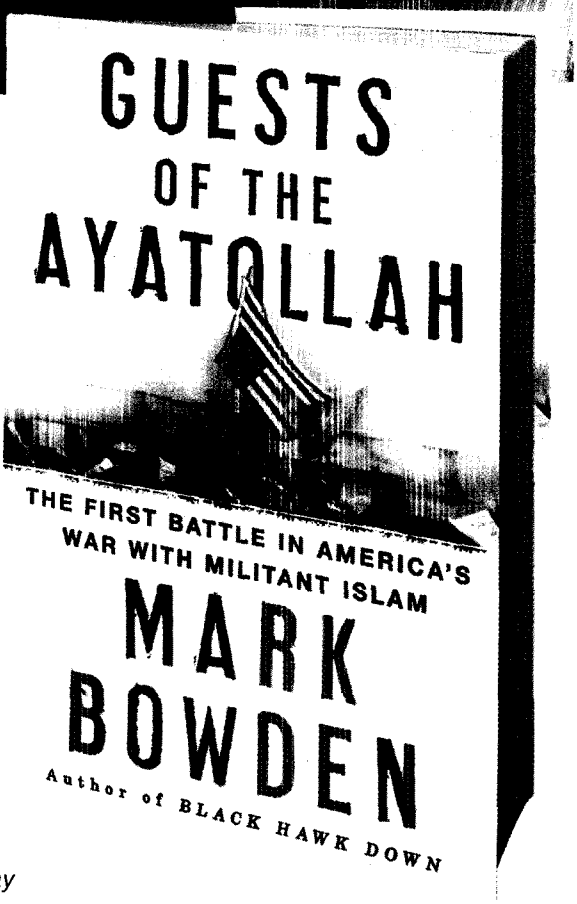

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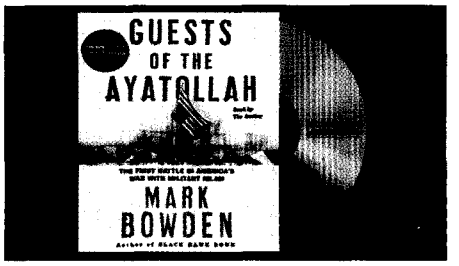

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CORRESPONDENCE

DIVINE TRUTH

PERHAPS IN AN ATTEMPT TO BALance out Harold Bloom's overly enthusiastic portrayal of Mormonism, James Wood uses invective I found surprising in a magazine that is usually quite circumspect in its treatment of minority religions ("The Misreader," May 1). Unorthodox? Certainly. Gnostic tendencies? Perhaps. Implausible? Sure. But "nonsense and fraudulence" are pejorative terms that can be hurled indiscriminately at any religion not one's own. There are several million educated, thoughtful Latter Day Saints who, for considered reasons, have found Mormonism worthy of their devotion—including, among many others, a major contender for the Republican presidential nomination and the current minority leader of the Senate.

GRANT HARDY
Professor of History
University of North Carolina–Asheville
Asheville, North Carolina

WOOD CRITICIZES BLOOM FOR writing a book that compares Yaweh, who is God, to Jesus, who "is only a man pretending to be God." Jesus did not pretend or declare Himself to be God; this is a common mistake. Christian tradition ascribed divinity to Jesus. But Jesus barely admitted—and then with circumspection and ambiguity—to being the messiah, let alone being divine. Based on the model of Augustus, who indeed claimed to be both a messiah and a divine son of God, later Christian tradition interpreted the concept of messiah as divine. As a traditional Jew, Jesus would not have done that.

ROBERTA KALECHOFSKY
Marblehead, Massachusetts

IT WAS GOOD TO READ SO THOROUGH a review of Bloom's new book, but, as a Christian Scientist, I noticed some inaccuracies. First, the phrase "Christian Scientism," if intended to denote Christian Science, is neither accurate as the name of our religion nor, it appears, necessary to any other point that might be intended by such a construction. Christian Science claims no "ism." Second, Bloom, as paraphrased by Wood, suggests that "American Christianity is neither very biblical nor very theological." This is completely inaccurate with regard to Christian Science. Based on biblical theology alone, Mary Baker Eddy, the discoverer and founder of Christian Science, founded her church and wrote *Science and Health with Key to the Scriptures*, one of the most widely read books on spiritual healing through prayer. Third, the notion that any of humanity's pathways to God—Mormonism, Christian Science, or any other sincerely held belief—could cause one to "[break] out into derision" seems unnecessarily disrespectful; in the case of Christian Science, it ignores more than a century of verified spiritual healing—of lives changed and health restored.

CHRIS WYE
Washington, D.C.

WOOD CRITICIZES BLOOM'S NEglect of the Bible's theological elements in favor of its literary ones. Ironically, THE NEW REPUBLIC seems to have made the same mistake with its cover—aiming for the artistic, while ignoring the intrinsic—by insensitively displaying on it the Hebrew name of God, the tetragrammaton, and thus offending most of those who would recognize the word (i.e., religionists, dismayed that thousands of copies containing their holiest expression will be carelessly thrown away). Had the symbol been a necessary element of the cover, then perhaps it could be defended on journalistic or aesthetic grounds. But, to any casual observer, it certainly was not, seeing as few are even familiar with the name's Hebrew form.

YAIR ROSENBERG
Queens, New York

THE USE OF THE TETRAGRAMMATON in place of Bloom's eyes was shocking and disturbing. Jewish custom dictates that the four-letter name of God (YHVH) be used only in texts that serve a holy purpose. Even most Jewish prayerbooks refrain from using the full Hebrew spelling of the tetragrammaton, using an abbreviation instead, since even these books may one day be defaced or destroyed. Your introductory piece in the table of contents assails Bloom's book for its "indifference to ideas, and . . . hostility to the New Testament." I was disappointed that your editors would not see that this graphic was indifferent and hostile to Jewish tradition and mores.

RABBI DANIEL LEVIN
Temple Beth El
Boca Raton, Florida

AT FIRST I WAS DISTURBED BY THE cover art, but then I recognized your brilliant effort at self-promotion: First, those who take Jewish law seriously will carefully dispose of the cover in a *genizah* (burial location for holy writ) to prevent the desecration and destruction of God's holy Hebrew name. A thousand years from now, archeologists will uncover a *genizah* and declare that TNR was the leading publication of the twenty-first century! Second, those

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who, like me, read TNR in the bathroom, will now have to read it in more public and respectable places. You are clever indeed, but I hope you do not do this too often.

RICHARD DINE
Silver Spring, Maryland

ROE GAIN

RAMESH PONNURU MAY VERY WELL be correct that, if *Roe* v. *Wade* is overturned, abortion will largely be handled on the state level, and the public will begin to perceive the matter as a local issue ("Half-Life," May 1). I suspect he is wrong, however, in his belief that this will benefit Republicans more than Democrats. Ponnuru writes that this "near-perfect solution for Republicans" would enthuse the base, while "pro-choice Republicans could more comfortably vote for Republican candidates, especially candidates for federal office." First, if abortion restrictions are expanded in various states, pro-choice Republicans would be more frightened by social conservatives, particularly those who live in battleground states.

More important, there are far more fiscally liberal or moderate Americans who vote Republican because of social issues than fiscal conservatives who vote Democrat because of social issues. In other words, sending the abortion issue back to the states would probably result in many Americans who are worried about their health insurance, energy prices, and the environment voting Democrat, but it would not result in a large number of wealthy social liberals voting Republican to score tax cuts.

Finally, as Ponnuru suggests, most other social issues are already viewed by the public as local issues (gay marriage, intelligent design, pornography and indecency, et cetera). Abortion is the primary issue that keeps social conservatism afloat as a national cause. If *Roe* sinks, I don't think it will go down alone.

TODD KADISH
Brooklyn, New York

RAMESH PONNURU RESPONDS: My article attempted to rebut the claim that the end of *Roe* would cause a backlash against the Republican Party by an allegedly pro-choice majority of the public. I think Todd Kadish is quite right to suggest that the end of *Roe* might hurt Republicans in a very different way: by reducing the salience of an issue that has helped them pick up some Democratic votes over the years.

GRIEVANCE

I WONDER, BASED ON HER REVIEW, IF Rochelle Gurstein has ever lost someone intimately known and loved ("Mourning in America," May 1). I wish that, when my husband died in my arms, I had had the inner resources that Joan Didion does, as well as her emotional honesty and her expressive skill. I wish that, a decade later, I'd had the words and the power to describe my grief as Donald Hall is able to describe his. Each death is different, as is each life and each love—but Didion and Hall express their essential commonality, and they do so much better than C.S. Lewis was able to do 45 years ago. Their books, besides helping them to process their own grief, help those of us who are less articulate to process ours.

LORI FOSTER
Berkeley, California

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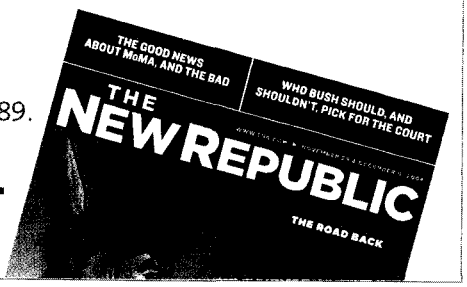

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Nighthawks

TRB
FROM WASHINGTON

DO YOU DETECT A DIFFERence among conservatives these days? The talk about exporting American values to the Middle East is waning—eclipsed by worries about whether such values can survive unregulated immigration at home. One hears less about the wonders of tax cuts and more about the perils of government spending. Instead of attacking the left for denigrating American culture, the right is increasingly doing so itself. A switch has been flipped—one side of the right's brain is shutting down, and another is turning on. We are moving, once again, from the conservatism of day to the conservatism of night.

Night conservatism is the older creed. The men (yes, men) who created the modern conservative movement in the decade after World War II were generally pessimists. All around them, they saw statism—whether in its Stalinist or New Deal incarnations—on the march. Mass society seemed to be erasing the economic and cultural distinctions that conservatives considered essential to liberty. The American people, insisted conservative forefather Albert Jay Nock, were irredeemable; conservatism was the refuge of the beleaguered, superior few. In his 1953 book, *The Conservative Mind*, Russell Kirk declared that American conservatives had been "routed" ever since 1789. Another key thinker, Richard Weaver, argued that civilization had been going downhill since the fourteenth century.

For day conservatism to be born, the right had to gain faith in America. The reconciliation began with Joseph McCarthy's crusade to exclude alleged communists from the institutions of American life. Most conservative intellectuals embraced McCarthy and, to their delight, found the American public on their side. By 1968, when Richard Nixon and George Wallace rallied the white working class against the pointy-headed left, conservatives had realized that populism could be their friend.

But day conservatism only truly emerged with the election of Ronald Reagan. The McCarthy and Nixon insurrections had been populist but dark—bitter insurgencies against a still-hegemonic liberal elite. Reagan's message, by contrast, was relentlessly optimistic. American culture—which conservatives had feared was irredeemable—would be rapidly remoralized. Communism—which conservatives had long considered ascendant—was destined for the "ash-heap of history." And tax cuts would unleash unimaginable prosperity.

The third element was particularly important. Earlier conservative leaders like Barry Goldwater had insisted that cutting government should precede cutting taxes, so as not to unleash the menace of budget deficits and inflation. But, under Reagan, conservatives switched from peddling broccoli to peddling ice cream. Reagan cut taxes without cutting government, on the theory that lower taxes would produce such epic economic growth that tax revenue would actually rise. The right—which had once prided itself on telling harsh truths—was suddenly telling Americans they could have it all.

In 1994, the conservative writer David Frum wrote a manifesto, *Dead Right*, which attacked the Reaganites for playing to the crowd and thus selling conservatism's soul. But, unbeknownst to him, night conservatism was on the verge of a comeback. The Republican revolutionaries who stormed Congress that fall represented the partial return of the pre-Reagan right. In contrast to Reagan's foreign policy adventurism, they were generally cynical about the world beyond America's shores—and they urged the United States to pull up its drawbridge, reducing immigration, retreating from international institutions, and slashing foreign aid. They demanded a balanced budget, even trying to cut the popular middle-class spending that Reagan had spared. And, by the late '90s, when the American people refused to impeach Bill Clinton, they had grown pessimistic again about American culture. In 1999, Paul Weyrich famously urged conservatives to do just what Nock had envisioned: retreat from American society and live as a beleaguered, superior counterculture.

When George W. Bush ran for president in 2000, he pointedly disassociated himself from the Republican Congress. Instead, he returned to Reagan's model—abandoning the assault on middle-class spending and promising tax cuts instead. He avoided harsh culture war rhetoric and advertised his comfort with blacks and immigrants. And, after September 11, he pushed Reagan's optimistic internationalism to its limits—declaring that the United States would not only defeat its terrorist enemies, but also extinguish tyranny from the earth.

Now, as the Bush era comes to a close, dusk is setting in again. Conservatives are in another frenzy over immigration, insisting that the United States is surrendering its sovereignty and its way of life. Day conservatives say America lifts immigrants up. But night conservatives are increasingly saying that immigrants bring America down.

After insisting, as Dick Cheney famously did in 2003, that deficits don't matter, conservatives are finding them intolerable again—and denouncing Bush as a heretic for expanding government. The movement toward gay equality is again turning conservatives sour on the culture, with fundamentalist leaders Jerry Falwell and Tim LaHaye recently predicting America's decline into paganism. Once-proud neoconservatives like Francis Fukuyama are calling the Bush administration's faith that military conquest will organically breed democracy a perversion of their creed.

To some extent, the correction is necessary. Even more than Reagan, Bush has espoused a conservatism without limits, which ignores the fallibility of American power, the fragility of public finance, or the need to tell hard truths—a Prozac conservatism that stays sunny by escaping the real world. No such conservative is likely to be elected in his wake (sorry, George Allen). But, while night conservatives are the natural successors, they are ill-suited to winning the White House, a job for which only optimists need apply. (And, as Bob Dole's 1996 campaign showed, no matter how much you try to paint a happy face, the darkness shines through.) Intellectually, conservatives have interesting days ahead—days of self-examination and, perhaps, a more honest accounting of their creed. But those days will likely be spent out of political power.

PETER BEINART

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Exx-Cons

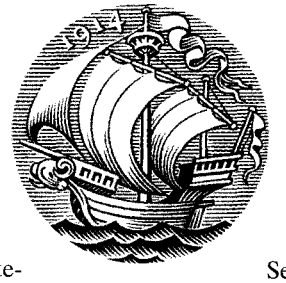
AL GORE SEEMS to have touched a nerve. *An Inconvenient Truth*, his new documentary about global warming—a simultaneously frightening and inspiring film—hadn't yet arrived in theaters last week when a guerrilla movement to discredit the movie had already begun. A network of oil-funded think tankers and conservative media outlets have joined arms to launch the most massive offensive against a PowerPoint presentation ever recorded

by man. But there is one salutary effect of this new campaign. The Swift-Boating of *An Inconvenient Truth* has brought into public view yet another shining star in the right's anti-science constellation. While the fundamentalist theo-conservatives sowed doubts about evolution during the debate over "intelligent design," the Exxon conservatives are storming into battle against global warming.

The Exx-con campaign is one for the textbooks, a laboratory-perfect case study of modern conservative media. First, there is the bizarre and aggressively anti-intellectual *Drudge Report* item, in this case an "**Exclusive**" about Southern California teenagers being frog-marched by their science teacher to view the perfidious Gore film. We imagine the poor Beverly Hills High students were strapped into their seats wearing eyelid clamps, as in the brainwashing scene in *A Clockwork Orange*. The science teacher, Drudge reported, "has annoyed some students with her instance [*sic*] that 'global warming' is a proven science." (Note to Drudge: Even the Exx-cons concede they have lost the war against thermometer-reading. Everyone agrees the planet is warming.)

Next, there is the ad campaign. The two 60-second spots created by the oil industry–backed Competitive Enterprise Institute (CEI)—over $1.5 million in donations from ExxonMobil alone since 1998—will be remembered for breaking the barrier between advertising parodies and actual ads. In "Energy," a young girl dreamily exhales carbon dioxide while evergreen trees soak in the life-sustaining compound. Our right to freely exchange this compound, CEI suggests, is now under attack. The ad makes the War on Christmas look like a mild skirmish compared with the impending confrontation over CO_2. "Carbon dioxide," an announcer intones. "They call it pollution. We call it life."

CEI's second ad takes a stab at refuting the science behind global warming—specifically, studies documenting melting polar ice sheets. "The Antarctic ice sheet is getting thicker, not thinner," the ad cheerily declares, while an image of a study from *Science* flashes across the screen. Just one problem with the claim: It's completely misleading. The study's author, Curt Davis of the University of Missouri, was so horrified that he released a statement. "These television ads are a deliberate effort to confuse and mislead the public about the global warming debate," he said. "They are selectively using only parts of my previous research to support their claims." Global warming is melting sea ice and the coastal areas of Antarctica at an alarming rate, which in turn has increased precipitation, thus thickening the ice in the interior. In other words, the melting coasts are making it snow more in the middle. But this is a bug, not a feature. Overall, the ice sheet is *losing* mass, not gaining it. As Davis said in response to the CEI ads, "The fact that the interior ice sheet is growing is a predicted consequence of global climate warming."



The CEI ads really are a new low. Washington think tanks are not always paragons of intellectual integrity, but we can't quite remember the last time that an institution ostensibly devoted to research so transparently whored itself to corporate backers—in this case, the oil industry. But CEI is just the tip of the, er, iceberg. Like clockwork, a *National Review* cover story debunking glacier melt arrived this week. It relies on research from three scientists connected to the energy industry. Meanwhile, on "The Journal Editorial Report," a TV show featuring the folks from *The Wall Street Journal*'s editorial page, Rob Pollock claimed, "Everyone agrees there has been some warming over the past century, but most of it happened before 1940." (Not true. The last three decades have seen the sharpest rise.) On Fox, a global warming documentary Sunday night featured the entire cast of Exx-con luminaries, including Patrick Michaels, John Christy, Roy Spencer, and Senator James Inhofe, whose contribution included the claim that global warming is "a total hoax." Finally, the rollout of the new anti-Gore campaign was capped by another ridiculous Drudge item. Gore and his entourage, Drudge breathlessly reported, took five vehicles to move 500 yards at Cannes. The only problem was the story wasn't true. (They walked.) How inconvenient. ■

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The CIA goes public. Speak Easy

BY NOAM SCHEIBER

FORMER CIA ANALYST Ray McGovern was en route to Atlanta in early May when he read that Donald Rumsfeld would be there giving a talk. McGovern had spent 27 years with the CIA before retiring in 1990. In the run-up to Colin Powell's now-infamous presentation to the U.N. Security Council on Saddam Hussein's supposed WMD, McGovern had enlisted four other former CIA colleagues to form a group they called VIPS—Veteran Intelligence Professionals for Sanity. The group had drafted a same-day rebuttal of Powell's case against Iraq. And, over the next three years, VIPS kept at it, producing eleven more communiqués and expanding to include some 50 members. Now that the 66-year-old McGovern finally had the chance to confront the defense secretary in person, he wasn't going to miss it.

McGovern says he didn't really know what he would ask during the event's Q&A. But, when Rumsfeld responded to a heckler with a lecture about how lying is a charge "frequently leveled against the president for one reason or another, and it is so wrong, and so unfair, and so destructive," something inside McGovern snapped. "I was appalled at that sanctimonious reaction," he says. "The president? She didn't say 'the president.' She said *you*!" And so began a more than four-minute dialogue with the Pentagon chief, with McGovern asking why Rumsfeld would "lie to get us into a war" and Rumsfeld denying that he had. At its climax, McGovern simply cut the seething defense secretary off: "You said you knew where [Saddam's weapons] were: 'Near Tikrit, near Baghdad, and north, east, south, and west of there.' Those are your words." This observation earned McGovern jeers from the generally pro-administration crowd and an elbow to the solar plexus from a security official, who began ushering him out before Rummy intervened. But the p.r. damage had been done. Within hours, footage of the tongue-tied defense secretary was all over cable and the Internet.

There was a time when seeing a former CIA man publicly dress down a top administration official would have caused jaws to drop. In an earlier era, the spook-turned-gadfly would have been declared persona non grata by his erstwhile colleagues and expelled from the brotherhood of spies. But, in a stark break with tradition, today's CIA officials are seamlessly moving on to second careers as authors of polemics, crusading pundits—even bona fide activists. In the year before McGovern's outburst, former operative Gary Berntsen published a detailed book about his experiences in Afghanistan, which cast the Bush administration in an unflattering light. Paul Pillar, now a professor at Georgetown University, penned a scathing article in *Foreign Affairs* after resigning as a top Middle East analyst last year. Tyler Drumheller, the head of the Agency's European operations until 2005, gave a "60 Minutes" interview denouncing the administration's use of intelligence.

And then there's Michael Scheuer, the former head of the CIA's bin Laden analytical unit, who didn't even wait to leave the Agency before writing a book critical of the Bush administration and the George Tenet–era CIA. Scheuer initially published his book anonymously, but he outed himself late in the 2004 presidential campaign. Just what did Scheuer's colleagues think of this ultimate violation of CIA omerta? "I must have signed 300 to 400 copies [for people] within the Agency."

IT WAS NO accident that the CIA McGovern joined as a Soviet analyst in 1963 resembled an Ivy League secret society. As Evan Thomas writes in *The Very Best Men*, his account of the CIA's early postwar years, spymasters like Frank Wisner focused their recruiting efforts on Ivy League colleges to find men pre-equipped with an "old-school" ethos. And, of course, the virtue the old CIA hands prized above all else was discretion. True to their Skull and Bones pedigree, most CIA men were loath to acknowledge they even worked for the Agency, much less disclose what they did there. Perhaps the most vivid personification of this code was Richard Helms, a longtime Wisner deputy who became CIA director in the mid-'60s. While testifying before a Senate panel a decade later, Helms refused to come clean about the CIA's role in undermining the Chilean government—and was eventually prosecuted for withholding information from Congress. But, following his sentencing, Helms returned to the CIA fold a hero. A roomful of retired operatives greeted him with a standing ovation—and even passed around a basket to pay his $2,000 fine.

The flip side of this mentality was swift punishment for anyone who aired the Agency's dirty laundry. In 1978, a former Angola station chief named John Stockwell published a book flaying the CIA for its brutal tactics against the country's rebel groups. Stockwell tried to distinguish between the hardworking rank and file, whom he respected, and the Agency as a whole, which he deemed out of control. But former colleagues ostracized him nonetheless. "He was perceived as an acidic critic," recalls former CIA counterterrorism chief Vincent Cannistraro. "People thought it was in poor form."

This is the CIA that shaped McGovern. In 1968, for example, he learned of a cable by a Vietnam analyst colleague reporting that U.S. forces faced twice as many Vietcong troops as the Pentagon's generals were acknowledging. McGovern was tempted to leak the information to *The New York Times* in order to expose the futility of the Johnson administration's war effort. In the end, though, he kept

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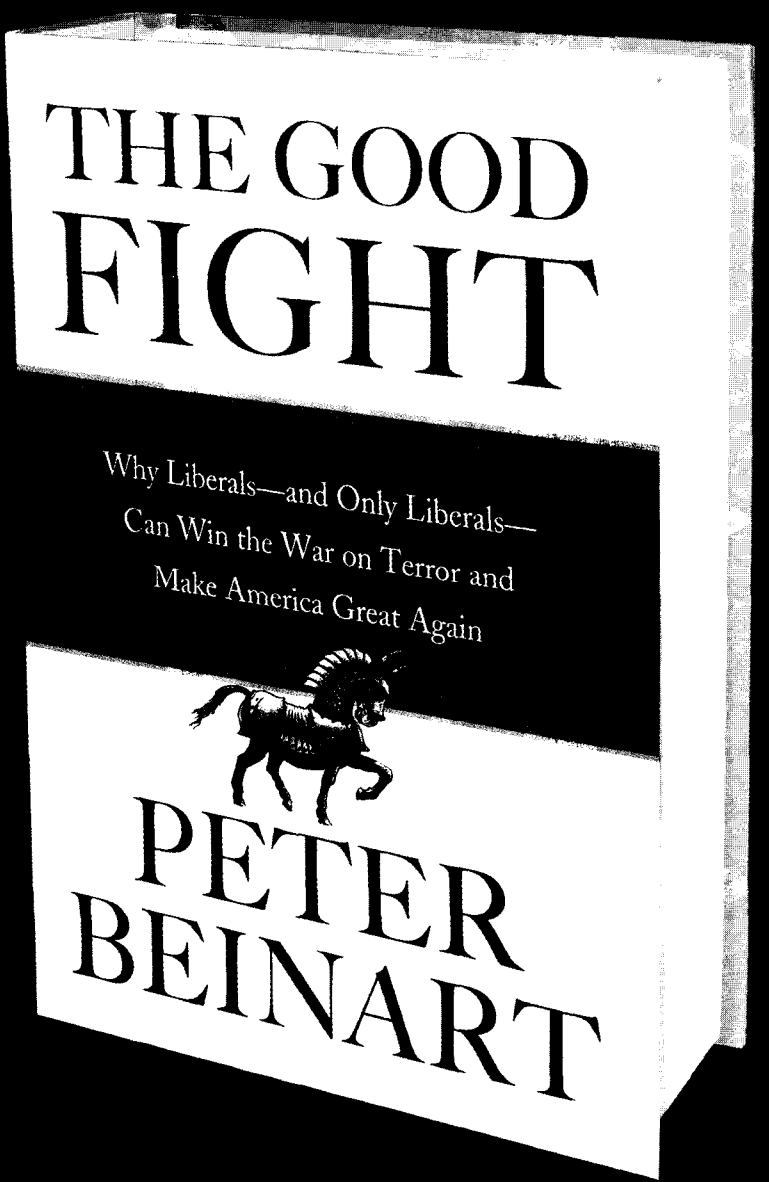

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his mouth shut, too worried about ruining his career.

The end of the cold war eroded the CIA's code of silence in two important ways. First, it dampened some of the urgency CIA hands felt in their workaday lives. During the cold war, "the danger to agents and people operating overseas was clear," says Dick Kerr, the CIA's deputy director in the early '90s. "Today's world is more cloudy, ambiguous." Second, the aftermath of the cold war brought political considerations closer to the CIA's doorstep. The embarrassment of the Aldrich Ames espionage scandal, congressional scrutiny of the Agency's shady friends, and a general impatience with government secrecy all nudged the CIA toward greater transparency.

This was the backdrop when a former operative named Dewey Clarridge submitted a manuscript to the Agency's Publications Review Board (PRB) in the spring of 1996. Clarridge worried that the censors would force him to delete large chunks of the book, a detailed account of his CIA glory days. But the changes Langley asked for were trivial, and people in the intelligence community took note. "Clarridge raised eyebrows," says Cannistraro, who left the CIA in 1991. "People realized you could write books and retire overtly ... rather than maintain lifelong cover." Indeed, in the late '90s, the chairman of the PRB, John Hollister Hedley, conceded he'd established a new precedent with the Clarridge book—aptly named the "Clarridge Precedent": Former operatives still couldn't reveal "sources, cover arrangements, sensitive liaison relationships, or covert facilities." But they could now disclose where they had served and speak generally about what they had done there.

IF THE POST-COLD-WAR atmosphere provided the first break in the CIA code of silence, the Bush administration's epic battles with the Agency over Iraq—and over assigning blame for flawed intelligence—came close to obliterating it. In the conservative telling, the CIA Bush inherited is a cesspool of Democratic partisans and countercultural liberals. "C.I.A. officials were betting their agency on a Kerry victory," wrote David Brooks in a column following the election. The recent deluge of CIA criticism, say conservatives, is an example of Langley showing its ideological stripes.

But that's simply not the case. In fact, while the early, Ivy-dominated CIA really was a bastion of liberalism (albeit one tempered by devout anti-communism), the demographics of the Agency shifted dramatically between the late '60s and the late '70s. The churning over Vietnam made cold war liberals a dying breed; in their place came a generation of New Left types skeptical of the CIA's shadowy m.o. "For my generation, the last thing in the world you would do ... is join the CIA," says Bob Baer, who arrived at the Agency from Berkeley in 1976. "The view was that it was out assassinating people. ... I wouldn't dare tell some of my liberal friends."

Increasingly, the CIA has been populated by a kind of nonideological moderate—a figure too square to be caught up in any countercultural zeitgeist, and not so ambitious as to frown on a government payscale. "I was raised by a Marine, educated by Jesuits all my life," says Scheuer. Probably the easiest way to summarize the reigning worldview within the CIA these days is pragmatic, heavily empirical, and tending toward foreign policy realism.

This worldview, not surprisingly, made George H.W. Bush's administration an ideal one from the perspective of the Agency. The CIA felt extremely comfortable with everyone from Bush himself—a former CIA director—to his top national security aides. McGovern, who was one of then–Vice President Bush's daily CIA briefers during the early '80s, gushes about the assignment. "It was a delight," he recalls. After he retired, McGovern and Bush remained in periodic contact. When the former president delivered the commencement speech at his son's college graduation, McGovern arranged for a private meeting in which the three snapped photos and reminisced about old times.

For former CIA officials, fond memories of Bush 41 led to high expectations for Bush 43—particularly after eight years in which the CIA's status had declined along with Washington's interest in foreign policy. "It started out looking like it was going to be a Powell-like administration, with a pragmatist in charge," says a wistful Frank Anderson, former head of the Agency's Near East division. When I asked Pillar which candidate Langley preferred in 2000, he chuckled as though it were a no-brainer. "I think it's likely that a lot [of us] voted for Bush."

As it happened, the honeymoon lasted approximately until September 11, when the administration reoriented its foreign policy around Iraq. And that's when the floodgates burst open. Scheuer wrote his book *Imperial Hubris* because he believed the U.S. invasion of Iraq had made the scourge of jihadi terrorism "geometrically worse." He was so aggrieved by attacks on the CIA's credibility that, according to *The Washington Post*, he once lectured a certain CIA critic named John McCain in the green room of a network talk show: "Sir, I'm a Republican, I vote Republican, and I thought your comments were scurrilous." As for Berntsen, says Baer, 20 years ago a guy like him "would have gone and lived somewhere remote in Northern Virginia. ... He might go off to lament the decline of the Agency, but he'd do it in stony silence." Last year, Berntsen's *Jawbreaker* bashed the Pentagon for letting Osama bin Laden escape from Afghanistan.

For his part, McGovern had spent the '90s working at a variety of charitable foundations in inner-city Washington, largely disengaged from the major foreign policy debates of the day. But, amid the rush to war—and the mainstream media's credulity toward the administration's claims—he felt a duty to get involved: "We'd been educated and trained at taxpayer expense in the really important discipline of analysis. We never thought we would be turning the tools on our own government." He wasn't the only one. ■

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The case against troops for Darfur.

Moral Blindness

BY DAVID RIEFF

NO ISSUE IN international politics commands a broader consensus than military intervention in Darfur. From the magazine *First Things* on the Catholic right to the Congressional Black Caucus, and from Senator Sam Brownback to the editors of this magazine, who recently declared with astonishing tone-deafness that THE NEW REPUBLIC was making Darfur "a crusade"—a term that will undoubtedly play well in Jakarta, Islamabad, and Cairo, not to mention Khartoum—any American with a shred of human decency is presumed to support the deployment of forces in Darfur, and quickly. As TNR's Richard Just has put it, "Darfur is an easy case. ... Anyone who considers himself a liberal idealist should know where to stand on Darfur, and what must be done. The only people left on the outside of this coalition will be the most hard-hearted of the liberal realists; and I'm not sure those people deserve to be called liberals anyway."

Actually, I'm not sure Just gets to decide who is and who is not a liberal. But questions of anathematization aside, it is interesting that, in the matter of Darfur, liberal interventionists have been far keener on direct U.S. or NATO intervention than conservatives. Just, who is emblematic of the former camp, has written flatly that "the calculus is stark: Either we put Western troops on the ground in Darfur or we concede the likelihood that the genocide will run its gruesome course." By contrast, in *First Things*, Allen D. Hertzke wrote about a U.S. role in an intervention force with far less enthusiasm. He too insisted that, without U.S. involvement, there could be no improvement. But, where Just saw no option other than the dispatch of Western troops, Hertzke insisted that other "forceful and moral options" remained, including a "determined effort to expand and empower African Union forces, add U.S. logistical support, secure more aid, and massively increase diplomatic and economic pressure."

After having been proved so catastrophically wrong in Iraq, it did not seem unreasonable to hope that liberal idealists like those around THE NEW REPUBLIC might now be prepared to think with less triumphalism and more sobriety about American military power. Crusades have a way of backfiring and—however good the intentions of those who call for them—causing harm in places where it is least expected. Yes, in the end, some form of international military deployment in Darfur may be necessary, both to protect Darfuri civilians from attacks by the government of Sudan and its *Janjaweed* surrogates and to enforce the recent Abuja peace agreement. But this does not mean that the deployment of American forces is the most desirable way to achieve this goal, let alone that such a military commitment is a moral imperative. To the contrary, there is a good case to be made that the United States is the *last* country that should be leading an international operation in Darfur.

TO PUT THE matter starkly, the United States no longer enjoys enough moral credibility in the world as a whole to intervene in Darfur in a way that would avoid deepening the civilizational crisis in which we find ourselves. Intervention would significantly exacerbate America's primary foreign policy challenge, a challenge far more significant in the long run than terrorism: that is, worldwide anti-Americanism. The reasons for this are straightforward and can be summed up by the words "the global war on terror" and by the names "Iraq," "Afghanistan," and "Israel-Palestine." Whether the United States is right or wrong—caught dead to rights or horribly misunderstood—is beside the point. The salient fact is that, in much of the world, the United States is viewed as a bully, an imperial aggressor, and a rogue state determined to apply one law to itself and another to everyone else. In the Islamic world, the situation is far worse. Again, rightly or wrongly, a strong majority of our planet's 1.5 billion Muslims believe that the United States is leading a new crusade against Islam. And it is in this explosive global context that advocates of an intervention in Darfur propose deploying our Armed Forces, as if rubbing salt on that global wound is somehow an insignificant or morally unworthy consideration.

Is it really necessary (after Abu Ghraib, and with Guantánamo still serving as a Jihadi recruiting poster) to explain how terribly dangerous a deployment of the U.S. Armed Forces is likely to be, particularly since, were it to occur, this occupation of Darfur—let's call things by their right names—would take place without even the fig leaf of a U.N. Security Council authorization? Do the interventionists truly believe that American power is so irresistible, and the United States so secure, that these questions need not be taken into account? On the evidence—or, more precisely, on the basis of the seeming indifference to the question—the answer would seem to be yes.

Obviously, the reason advocates of a U.S. military intervention in Darfur have not dwelt on these issues of global governance and of U.S. security is that they view them as insignificant when compared with the moral imperative of intervening in what Eric Reeves, the most eloquent and passionate proponent of intervention, has called the first genocide of the twentieth century. For Reeves, and for the many thousands of grassroots activists who have been instructed by him, the world that failed to prevent the slaughter of the Rwandan Tutsis must not fail the Darfuris. As Reeves has written, "Will the genocide be allowed to continue? Will international deference continue as the regime's *génocidaires* predictably and relentlessly assert the claim of 'national sovereignty?' How many must die before the world says, 'Enough?'"

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Reeves's use of the term *génocidaires* reflects not only his moral commitment to stopping the killing in Darfur, but, more problematically, an analytical framework that is not beyond challenge. Yes, in the United States, it is universally believed—so much so that the claim is even enshrined in a unanimous congressional declaration—that a slow-motion genocide has been taking place in Darfur. But many reputable groups abroad, including the French section of Doctors Without Borders, whose physicians have been on the ground in Darfur for a very long time, reject claims like those made by Reeves. Does this matter, since everyone agrees the government of Sudan has committed or abetted the most terrible crimes in Darfur? On the most obvious level, the answer is no. The Genocide Convention is itself a deeply flawed document, and the crimes of the authorities in Khartoum have been unspeakable. But, on another level, the recurrent use of the term "genocide" is a way of delegitimizing any questioning of the intervene-now-no-matter-the-cost line. We failed to intervene in Rwanda, and now we know we were wrong; Darfur is the Rwanda of today; hence the only correct thing to do is intervene at once in Darfur. *Q.E.D.*

The problem with this—the eternal problem posed by the assertion of this kind of Kantian categorical imperative in matters of war and peace—is the problem of politics. Except for those who frankly favor the anti-government insurgents in Darfur—and they are more to be found on the Christian right, which has supported Minni Minnawi's Sudan Liberation Movement as it once supported John Garang's insurgency in Southern Sudan—advocates of a U.S. deployment have been maddeningly vague about what will transpire in Darfur after foreign forces halt the killing.

To his credit, Reeves has written that any outside military force would have to ensure that the rebel guerrillas do not take advantage of the foreign presence to improve their position on the ground. But that is what an international deployment will almost inevitably do, which is why Minnawi and others have been campaigning so hard for one. The deployment of foreign troops, whose mission will be to protect Darfuri civilians, will allow the guerrillas to establish "facts on the ground" that will strengthen their claims for secession. That is what makes the interventionists' claim that the intervention will be purely "humanitarian"—that it will protect civilians being murdered, raped, and displaced by the *Janjaweed* but do little or nothing else—so disingenuous. For it is virtually certain that this is not the way events will play out if U.S. or NATO forces deploy. To the contrary, such a deployment can have only one of two outcomes. The first will be the severing of Darfur from the rest of Sudan and its transformation into some kind of international protectorate, à la Kosovo. But, at least in Kosovo, the protectorate was run by Europeans—by neighbors. In Darfur, by contrast, it will be governed by Americans (who are already at war across the Islamic world) and possibly by NATO (i.e., Africa's former colonial masters). Now there's a recipe for stability.

If anything, the second possibility is even worse. Assuming the intervention encounters resistance from the *Janjaweed* and the government of Sudan (and perhaps Al Qaeda), the foreign intervenors will arrive at the conclusion that the only way to bring stability to Darfur is, well, regime change in Khartoum: In other words, the problems of Darfur are, in fact, the product of Al Bashir's dictatorship, and these problems can be meaningfully addressed only by substituting a more democratic government. Such an intervention may well end up being Iraq redux, and it is disingenuous to pretend otherwise. But, then, it was disingenuous to pretend that the United States could democratize Iraq at the point of a gun.

The idea that, after Bosnia, Rwanda, Kosovo, and Iraq, intelligent activists can still speak of humanitarian intervention as if it were an uncomplicated act of rescue without grave implications is a testimony to the refusal of the best and brightest among us to think seriously about politics.

Is this what the marriage of human rights and American exceptionalism has led us to? If so, God help us. My own view is that the main culprit here is human rightsism, a worldview that is based, as John Gray has put it, "on the moral intuitions of the liberal academy ... a legalistic edifice from which politics has been excluded." Were politics present in their thinking, pro-Darfuri intervention activists would not use the reductionist dichotomy of victims and abusers that has been the staple myth of humanitarian intervention. The people being killed by the *Janjaweed* have political interests. So do the extended families of the *Janjaweed* themselves, who, lest we forget, are also Darfuris. To describe the former simply as victims deprives them of any agency. To describe the latter simply as killers precludes actually understanding the conflict as anything other than an eruption of human wickedness, rather like a volcano or an earthquake.

One debilitating defect of the liberal interventionism is that it ignores the political implications of what it calls for. Another is that, perhaps out of the honorable motives of despair and outrage, it champions the use of American hard power while acting as if American soft power, were it to be diligently and seriously applied, can never produce the intervention that might actually work—for example, one undertaken by African countries with, perhaps, the participation of forces from Islamic countries outside the region. Most gravely of all, liberal interventionism ignores the global political context in which it calls for the use of the U.S. military.

LEAVE ASIDE IRAQ—and the detestation with which the United States is now regarded—and focus on history. Reeves may sneer at the idea of national sovereignty and bemoan the African Union's insufficiently aggressive line toward the government of Sudan. The fact remains that the consensus in postcolonial Africa has been to maintain the national borders that existed at the time of independence, despite their obvious artificiality, because, in redrawing them, Africa might reap the whirlwind. But that is why there was so little sympathy in Africa for Katangese or Biafra secession; it is why most

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Is Israel an asset or a burden to our country?

The United States is without question Israel's most important ally. Also, without question, Israel is the staunchest and most reliable friend of the United States. But there are some who believe and vigorously advocate that Israel is a burden to the United States and that, were it not for Israel, peace would prevail in the Middle East.

What are the facts?

The "Israel lobby." A patriotic-named foundation urges, in full-page ads in national newspapers (very expensive – who pays for it?), to influence Congress to withhold support for Israel. Professors from prestigious universities write essays in which they aver that the United States is in thrall to the "Israel lobby." This lobby is said to pull the strings of American policy. Its supposed main promoters are AIPAC (American Israel Public Affairs Committee) and the so-called "neo-cons," some of whom are indeed Jewish. They are said to exert an almost magical spell over policy makers, including the leaders of Congress and the President. Some even say that the Iraq war was promoted by this omnipotent "Israel lobby," that the President was flummoxed into declaring war on Saddam Hussein, not in order to defend the United States or to promote its interests, but in order to further the interests of Israel.

> "Israel and the United States stand together in their fight against Islamo-fascist terrorism. These shared values will bind Israel and the United States forever."

Israel is indeed a major recipient of U.S. aid. Israel receives yearly $1.8 billion in military aid and $1.2 billion in economic aid, a substantial portion of our yearly aid budget. Almost all of the military aid is spent in the United States, making Israel one of the major customers of the U.S. defense industry. Virtually all of the economic assistance goes for repayment of debt to the United States, incurred from military purchases dating back many years.

America's staunchest ally. A good case can be made that aid to Israel, certainly the military portion, should be part of the United States defense budget, rather than of the aid budget because Israel is, next only perhaps to Britain, by far the most important ally of the United States. Virtually without exception, Israel's government and its people agree with and support the foreign policy objectives of the United States. In the United Nations, Israel's votes coincide with those of the United States over 90% of the time. The Arabs and other Moslem countries, virtually all of them recipients of American largess, almost reflexively vote against the United States in most instances.

Israel is the major strategic asset of the United States in an area of the world that is the cradle of Islamo-fascism, which is dominated by tyrants and permeated by religious obscurantism and shows almost total disregard for human rights. During the decades-long Cold War, Israel was America's indispensable rampart against the inroads of the Soviet Union. It is now the bulwark against the aggressive intentions of Iran. During Desert Storm, Israel provided invaluable intelligence, an umbrella of air cover for military cargo, and had personnel planted in the Iraqi deserts to pick up downed American pilots.

Gen. George Keagan, former head of U.S. Air Force Intelligence, stated publicly that "Israel is worth five CIAs," with regard to intelligence passed to our country. He also stated that the yearly $1.8 billion that Israel received in military assistance was worth $50 to $60 billion in intelligence, R&D savings, and Soviet weapons systems captured and transferred to the Pentagon. In contrast to our commitments in Korea, Japan, Germany, and other parts, not a single American serviceperson needs to be stationed in Israel. Considering that the cost of one serviceperson per year – including backup and infrastructure – is estimated to be about $200,000, and assuming a minimum contingent of 25,000 troops, the cost savings to the United States on that score alone is on the order of $5 billion a year.

Israel effectively secures NATO's southeastern flank. Its superb harbor, its outstanding military installations, the air and sea lift capabilities, and the trained manpower to maintain sophisticated equipment are readily at hand in Israel. It is the only country that makes itself available to the United States in any contingency. Yes, Israel is not a burden, but a tremendous asset to the United States.

Israel is indeed America's unsinkable aircraft carrier in the Middle East and the indispensable defender of America's interests in that area of the world. The people of the United States, individually and through their Congressional representatives, overwhelmingly support Israel in its seemingly unending fight against Arab aggression and Moslem terror. But that support is not based on the great strategic value that Israel represents to the United States. It is and always has been based on shared values of liberty, democracy, and human rights. America and Israel are aligned by their shared love of peace and democracy. Israel and the United States stand together in their fight against Islamo-fascist terrorism. These shared values, these common ideals, will bind Israel and the United States forever.

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African leaders insist that the Eritrean secession remain an exception for the sake of continental stability. There is nothing stupid, venal, or contemptible about this. And, whatever Reeves may imagine, there are many thoughtful African leaders whose reluctance to confront Khartoum is based in large part on these considerations.

A sense of contemporary Africa should lead those concerned with the fate of Darfuris to emphasize an African—or, at the very most, a U.N.—response, rather than an U.S. or a NATO one. To their credit, the interventionists can put themselves in the place of the suffering peoples of Darfur. To their discredit, they cannot put themselves in the place of most people in the world who abhor U.S. military action. Again, the reigning global interpretation of American power may be false, but it is also dominant. And unless, like the conservative writer Norman Podhoretz and his ilk, you believe the United States should be harshly prosecuting what he has called "World War IV" against radical Islam, you are obliged to acknowledge that an intervention, however good it may be for the Darfuris, may be terrible for the rest of the world. If, on reflection, Reeves and those who think like him believe that it is worth doing anyway, that is a perfectly defensible position. What is indefensible is not seeing—or pretending not to see—the problem. ■

Congress lets the NSA run amok.

Silent Hill

BY JEFFREY ROSEN

On MAY 11, *USA Today* revealed that the National Security Agency (NSA) has been secretly collecting the phone records of tens of millions of Americans in the hope of detecting terrorists. In response to the story, civil libertarians are once again rushing to court. There is a strong argument that the NSA violated the Stored Communications Act, a law that Congress passed specifically to prohibit this kind of surveillance, and courts may indeed strike the program down. Civil libertarians have also filed lawsuits challenging another NSA surveillance program, which, according to *The New York Times*, allows the administration to intercept phone conversations and e-mails in which one party is a suspected international terrorist. Judges may eventually strike down that program, too, since it appears to violate the Foreign Intelligence Surveillance Act (FISA).

While lawyers file their briefs, politicians on Capitol Hill have theatrically expressed shock and outrage. During the confirmation hearings for Michael Hayden, the former NSA chief who has been nominated to run the CIA, Republicans and Democrats criticized Hayden for his unapologetic defense of the NSA surveillance programs. But, despite the displays of bipartisan pique, many Republicans and Democrats in Congress seem content to let courts take the lead in striking down Bush's domestic spying programs, rather than demanding a full-blown congressional investigation followed by new laws that would give the president whatever emergency powers he needs, but only with scrupulous congressional oversight.

At the height of the most serious surveillance scandal since the Nixon era, Congress's decision to abdicate its oversight powers to the courts is a serious mistake. The courts have a checkered history when it comes to protecting civil liberties from abuses of executive power. The truth is that most of the great advances for civil liberties in the postwar era came from Congress and the courts working as partners, rather than from the courts alone. So, if Congress is serious about saving the country from illegal surveillance, it ought to do more than just wait for judges to rule. It ought to mobilize public opinion and act.

FROM THE FOUNDING era until the present, the Supreme Court has tended to mirror deeply felt currents in public opinion, and cases involving civil liberties in wartime are no exception. During periods when Congress supported the rights of dissenters who were being menaced by the executive, the courts tended to uphold these rights as well; when both the president and Congress were committed to repressing unpopular speech, the courts tended to retreat. The Supreme Court upheld the convictions of dissenters during World War I, the detention of Japanese Americans during World War II, and the convictions of communist leaders during the cold war; and the Court defended the right of newspapers to publish the Pentagon Papers only after public opinion had turned against the Vietnam war. "A cynical, though nonetheless apparently accurate, interpretation of the Court's free speech jurisprudence is that political dissidents become entitled to significant constitutional protection only when they cease to pose a serious threat to the status quo—that is, Communists and Ku Kluxers in the second half of the 1960s, but not, respectively, in the 1950s or 1920s," writes legal historian Michael Klarman.

A survey published in *Judicature* of 88 civil rights and civil liberties cases between 1953 and 1994 found that, in most cases, the Court was roughly in sync with public opinion. Generally, when public opinion opposed a particular rights claim, so did the Supreme Court—supporting only 40 percent of the claims that the public opposed. When public opinion was evenly divided or favorable to the rights claim, the Supreme Court supported the claim in about 70 percent of the cases.

This article is adapted from Jeffrey Rosen's new book, THE MOST DEMOCRATIC BRANCH: HOW THE COURTS SERVE AMERICA *(Oxford University Press).*

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For most of U.S. history, the public expected that civil liberties in wartime would be protected primarily by Congress rather than the courts. The great principles of free speech and fair trials that the courts are willing vigorously to enforce today—in particular, the right to criticize government officials and the right to seek judicial review of convictions—were formulated and defended for most of U.S. history by Congress; and the courts came only belatedly to codify constitutional rights that had been defined and won in the political process.

In 1917, for example, the Wilson administration tried to exploit antiwar sentiment by urging Congress and the courts to suppress political dissent. In debates over the Espionage Act of 1917, Congress took its constitutional responsibilities seriously and rejected some of the most draconian provisions proposed by Woodrow Wilson, including one that would have allowed the president to censor the press. (Some Bush administration officials have implausibly tried to resurrect the Espionage Act of 1917 by raising the possibility of prosecuting *New York Times* journalists for exposing the NSA's secret surveillance program.) Despite Congress's attempts to protect free speech by refining the Espionage Act, lower-court judges tended to construe the act very broadly. As a result, more than 2,000 people were prosecuted under the Espionage Act, and more than 1,000 of them were convicted.

Not until 1937 did the Supreme Court finally repudiate its restrictive view of free speech, reversing the conviction of a Communist Party activist who had urged the creation of an independent black nation in the South. But, in doing so, the Court relied on principles that civil libertarians had already persuaded Congress to embrace—namely, that speech could only be banned when it threatened to incite illegal conduct. And it did so at a time when public opinion was willing to protect agitators for civil rights.

This isn't to say that the courts throughout U.S. history have been entirely passive in the face of executive overreaching. But the courts have tended to be most effective when, rather than acting unilaterally, they encourage Congress to oversee the executive—and refuse to let the executive take extraordinary measures without clear congressional support. For example, the Court's decision to uphold the detention of Japanese American citizens in the *Korematsu* case in 1944 is widely viewed as one of the darkest moments in its history. But, although properly criticized for succumbing to popular hysteria, the Court was also careful to distinguish between temporary executive detentions (which had been endorsed by Congress as an emergency measure) and ongoing executive detentions (which Congress never endorsed). In a case decided the same day as *Korematsu*, the Court struck down the ongoing detention of Mitsuye Endo, a 22-year-old clerical worker. The congressional law authorizing curfews and evacuation on the West Coast said nothing about detentions, the Court emphasized, and the program had been developed by government officials in the heat of the moment—much like the NSA surveillance program. By insisting on explicit congressional authorization for extraordinary presidential actions during wartime, the Court encouraged both branches carefully to weigh the consequences of abridging liberty in the name of security.

Electronic surveillance is another area where the Supreme Court has, in the past, made suggestions and Congress has responded. In 1967, the Court offered a general framework for the regulation of wiretapping, and Congress responded by supplying the details, resulting in one of the most successful privacy laws ever. Similarly, both of the laws that the Bush administration's surveillance program seems to have violated—the Foreign Intelligence Surveillance Act of 1978 and the Stored Communications Act of 1986—were passed by Congress in response to Supreme Court opinions that invited congressional action, rather than preempting it. The Court outlined a broad framework for regulating surveillance and allowed Congress to fill in the blanks, instead of presuming to impose detailed rules by judicial fiat.

UNFORTUNATELY, AFTER September 11, both the Supreme Court and the executive found themselves in a more unilateralist mood. While other Western democracies have imposed legislative and judicial oversight on the preventive detention of terrorism suspects, the Bush administration—arrogantly and inexplicably—refused to acknowledge any role for Congress or the courts.

If President Bush had mustered the humility to ask the Republican Congress for help, it would have immediately obliged by passing a comprehensive law of preventive detention. Instead, the administration chose to compound the dangers of preventive detention by making up its procedures on the fly, inventing new legal categories in order to avoid accountability to anyone outside the executive branch.

In repudiating the Bush administration's unilateralism, unfortunately, the Supreme Court was more concerned about saving the president from his own excesses than it was about encouraging Congress to supervise the president. In the *Hamdi* case in 2004, four justices—Sandra Day O'Connor, joined by the late William H. Rehnquist, Anthony Kennedy, and Stephen Breyer—concluded that Congress had authorized the detention of enemy combatants seized on the battlefield, but they also concluded that citizens held in the United States as enemy combatants must be given a meaningful opportunity to challenge their detentions before a neutral decision-maker. Accordingly, they suggested a series of judicial procedures that might allow the president to detain citizens with oversight by federal judges or by a military tribunal.

In focusing self-referentially on the role of judges in checking the president, the Supreme Court slighted the role of Congress, which might have been more likely to make its views clear if the Court hadn't preempted the need for congressional action. This had the unfortunate effect of removing any political pressure on Congress to enact the comprehensive procedural safeguards that some European

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countries with systems of preventive detention have adopted. It also emboldened Bush to take the remarkable and unconvincing view that the congressional resolution authorizing him to find the perpetrators of the September 11 attacks could be stretched to authorize him to break U.S. surveillance laws with domestic wiretaps of American citizens. In fact, the Supreme Court has hardly endorsed an expansive view of the "use of force" resolution: Four justices have insisted that the congressional resolution doesn't authorize the detention of American citizens seized in the United States, and a fifth, Antonin Scalia, has insisted that the resolution doesn't authorize the detention of a citizen under any circumstances. For this reason, the Court may well be skeptical of the Bush administration's claim that Congress has authorized domestic surveillance. If, by contrast, the Court had struck down the executive's system of preventive detention as being unauthorized by Congress, then Congress likely would have stepped into the breach to provide whatever authorization the president thought necessary.

Similarly, after the Court held, in 2004, that aliens detained at Guantánamo Bay had a right to file petitions of habeas corpus challenging their detention, Congress responded essentially by overturning the decision. If the Court had ruled more modestly—holding that enemy combatants tried before military commissions could challenge the legal basis for their trials, but that other detainees captured and held outside the United States could not do so—then Congress might not have been roused to repudiate the Court in such sweeping terms. It's always a good thing when Congress clarifies its views in the war on terrorism. But, instead of passing detailed regulations specifying the conditions for military trials, Congress was provoked instead to cut off access to the courts without providing a better alternative. Now the Court has another opportunity to rule on the constitutionality of the military commissions in the *Hamdan* case, which it will decide by the end of June. Rather than holding that the military commissions have been authorized by Congress but must comply with the Geneva Conventions, the Court would do better to refuse to express an opinion about whether Congress has authorized the commissions. This would force Congress to make its views clear.

WHY HAS CONGRESS been so passive after September 11, refusing to assert its authority by supervising the president's broad claims of executive power—and also refusing to authorize judges to do so? The most obvious explanation is that this particular Republican Congress has been so reluctant to impose any limits on the White House that it has abdicated much of its oversight responsibility for partisan reasons and turned itself into a rubber stamp for executive overreaching. At the same time, the president has demanded congressional passivity by repeatedly asserting his own unilateral power to detain American citizens without congressional authorization. By contrast, previous congressional decisions to detain American citizens followed some sort of executive invitation to action. John Adams thought that he needed Congress's approval to detain even aliens in wartime. Abraham Lincoln believed that he and Congress shared the power to detain American citizens, and, as a result, Congress approved his suspension of habeas corpus—albeit after the fact. Once the United States entered World War II, Franklin Roosevelt cooperated with Congress, and, as a result, Congress made it a crime to violate his evacuation orders on the West Coast.

If anything could rouse Congress from its somnolence, you would think that the domestic surveillance scandals would. But, in the current polarized atmosphere, the congressional response to domestic surveillance may continue to divide along party lines. By and large, the country seems to be split over NSA surveillance. After breaking the latest surveillance story, *USA Today* reported that 51 percent of Americans disapproved of the NSA's data-mining of phone records, while 43 percent of those polled said they favored the program. These numbers are consistent with the response to the other NSA surveillance program after the *Times* exposed it: Three national polls in January found that slightly more Americans supported the program than opposed it. But these numbers break down further along party lines, with Republicans more likely to support warrantless wiretaps and Democrats more likely to oppose them. This is hardly a recipe for a bipartisan groundswell in Congress that could lead to meaningful reform of the kind that followed the revelation of Nixon's spying on his critics in the 1970s.

If the Democrats take the House or Senate in November, of course, Congress may indeed lash out against domestic surveillance at last. But the Democrats have already made clear that they are more interested in using their subpoena powers to investigate the White House's past abuses than in refining the law to ensure that similar abuses don't occur in the future. Representative John Conyers, who would be head of the House Judiciary Committee, introduced a bill in December calling for a "select committee to investigate the Administration's intent to go to war before congressional authorization, manipulation of pre-war intelligence, encouraging and countenancing torture, retaliating against critics, and to make recommendations regarding grounds for possible impeachment." Now that a Democratic takeover of the House is looking less hypothetical, Conyers has backpedaled: Rather than immediately seeking impeachment, Conyers qualified recently, he was calling for comprehensive oversight of the administration's alleged abuses involving surveillance and torture, "performed by a select committee made up equally of Democrats and Republicans."

Congressional Democrats ought to resist the immediate gratification of punitive investigations and instead rally around some of the thoughtful proposals to oversee the president's conduct in the war on terrorism. A model for this kind of oversight is the bill to authorize the detention of unlawful combatants—introduced by California Democratic Representative Adam Schiff—that would give the

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president the necessary authority to detain enemy combatants, but only in exchange for congressional and judicial oversight. Similar bills could be crafted to amend FISA to allow access to phone conversations without warrants in emergency situations where one party has clear links to suspected terrorists, with oversight after the fact to ensure that the information is not being used to prosecute low-level crimes having nothing to do with terrorism. A bill along these lines would be preferable to the one drafted by Senator Arlen Specter, which would require the government to get approval from the secret FISA court before engaging in surveillance without a warrant. Specter's bill seems to dismantle many of FISA's legal restrictions, rather than reaffirming them. So far, unfortunately, thoughtful compromises have languished in Congress, because Republicans will tolerate no legal restrictions on the president and Democrats are more interested in scoring political points than in balancing liberty and security. But now that Republicans face the possibility of losing Congress, perhaps they will rediscover the virtues of compromise.

IT MAY SEEM surprising that Democrats and Republicans in Congress turned toward the courts to spare them the need to make hard political decisions in the 1960s and 1980s respectively—in each case, at the very moment when the party began consistently to win national elections. But the turn toward judicial unilateralism at a moment of political victory is often a sign of trouble to come. In the years leading up to the Civil War, for example, the South was doing quite well in national politics. But, at its moment of national triumph—after winning the presidential election of 1856—Southern Democrats began to embrace extremist theories about constitutional restrictions on Congress's power to solve the slavery question, which the Supreme Court endorsed in the *Dred Scott* decision. Southerners spoke of themselves as principled and derided their opponents as craven politicians, but this exaltation of principle over politics proved to be their undoing.

Today, on the right and the left, there are similarly combative declarations about the importance of defending constitutional principle regardless of the political consequences. This could lead to impeachment or to sweeping efforts by the Supreme Court to save the country in the war on terrorism. By embracing judicial unilateralism as a mark of their devotion to principle, however, extremists on both sides risk dooming themselves to electoral failure. If the courts embrace the invitation to unilateralism, they risk a backlash that could imperil their effectiveness and legitimacy in ways that will make the current attacks on judges look like shadowboxing. Congress can best serve the country by imposing legal restrictions on the president, rather than trying to remove him from office or protect him from any oversight at all. And the courts can best serve the country in the future as they have served it in the past: by reflecting and enforcing the constitutional views of the American people. ■

The strange genius of Oprah.

Thank You for Sharing

BY LEE SIEGEL

NOW CELEBRATING HER twentieth year as the host of the world's most influential talk show, Oprah Winfrey is to television what Bach is to music, Giotto to painting, Joyce to literature. *Time* magazine hit the nail on the head when it recently voted her one of the world's handful of "leaders and revolutionaries." (Condoleezza Rice wrote Oprah's citation: "She has struggled with many of the challenges that we all face, and she has transformed her life. Her message is empowering: I did it, and so can you.") Like all seminal creative figures, her essential gift lies in her synthesizing power. She has taken the most consequential strands in modern life and woven them together into an hourlong show that is a work of art.

The boilerplate criticisms of Oprah—she exploits a culture of victimization that she did so much to create; she glamorizes misery; she amplifies already widespread narcissism and solipsism; she fills people's heads with hackneyed nostrums about life—are correct, up to a point. But that's not the whole story. Oprah's critics write as if her goal of extending to her audience empathy, consolation, and hope were intrinsically cheap and cynical. On the contrary: The question is whether that is really what she is offering.

Oprah's aspiration to inspire her audience with hope—elaborated on her TV show, in her magazine, and on her website—is hardly ignoble. Her "victimized" viewers—not all her viewers, to be sure—are simply people who have been hurt and have nothing to guide them and nowhere to turn. So they make a virtue of necessity and convert their injuries into proactive forces in the world—just as some people turn their old school ties into proactive forces in the world.

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Narcissism and solipsism? Sure. But why not call it withdrawal into a protective inner space instead? When Oprah, in the course of seven days, talks to 13-year-old boys who have been seduced by their teachers, features "flattering clothes for all figures," presents "five things that can make you younger," and follows that with the story of a woman whose husband set her on fire, she is hitting the different planes of the self like hitting the walls of a solitary fortress. In a world where it's hard for some people to know how to think about themselves, the assurance that fashion smiles on you however you are shaped (be content with who you are) and that some people have it a lot worse than you do (count your blessings) is worth gold.

IN 1986, HUMAN nature in America started to change. That year, "The Oprah Winfrey Show," based in Chicago, became nationally syndicated, and the country entered the beginning stages of a quiet cultural revolution. It took awhile for the transformation to take hold, but, four years later, the effects were unmistakable. Do you really think George H.W. Bush, who presided over the spectacularly successful Gulf war, lost to Bill Clinton in 1992 because of a sagging economy? It was Oprah, stupid. It was Oprah behind Clinton in 1992 and also in 1996; and it was Oprah behind George W. Bush in 2000 and 2004, electoral shenanigans notwithstanding.

It's safe to say that, with her parade of afflicted guests, Oprah helped along the perception of Clinton's childhood wounds as evidence of authentic character. With her emphasis on imperfect self-presentation as proof of genuine intention—she has appeared on the air in her bathrobe, without makeup—she also helped create an atmosphere that turned Al Gore, and then John Kerry, into fabricated con men who were too handsome (Kerry had his lanky Jimmy Stewart allure), articulate, and privileged to be trusted or true. Bush, on the other hand, was so inarticulate, awkward, and funny-looking that, when you thought of his own super-privileged background, you felt that at least he had *something* going for him. And all that unconcealed imperfection made him real—or at least electable.

It's ironic that *O*, Oprah's glossy monthly magazine, relies on the same formulas as potent arbiters of perfect appearance like *Glamour*, *Cosmopolitan*, and *Self*. Like its founder and editorial director, *O* is on the very front line in the American struggle between tyrannical appearances and the ordinary, imperfect, mortal person. Not just the suffering, injured person, but the unbeautiful person. In our society, not measuring up to resplendent appearances can cause a deep psychic wound. Every sphere of life has its heroic moments, and, in the War of Ordinary People Against Ideal Images, this exchange between Oprah and Julia Roberts is the equivalent of that solitary figure confronting the tank in Tiananmen Square:

> Oprah: Does the pretty thing ever get to ya? ... I'm wondering, I was having this discussion with my girlfriend the other day. I said, "It's a really great thing we were never, like, pretty women, because now we don't have to worry about losing that."
>
> Julia: You can't really complain about being in a movie called *Pretty Woman* when you're the woman.

It's hardly a coincidence that Roberts has been one of Oprah's select circle of favorite guests. Her full mouth and large, lustrous eyes contrast with and echo Oprah's own features. Just 33 years ago, when a 19-year-old Oprah got her start in television, anchoring the news for a local Nashville station, society would not have been ready to acknowledge such a comparison. You can only talk about it now because Oprah has become so rich and famous—she attracts tens of millions viewers around the world, and her net worth is said to be about 1.4 billion dollars. But the way she orchestrates and manipulates appearances on her show is one of the sources of her success.

It is not hard to imagine that, for many middle-class black women in her audience, Oprah's dig at Roberts—"the pretty thing" fades, which is a tragedy when all you have is the pretty thing—is an affirmation of sorts. At that moment, the white movie star (the yuppies' very goddess) is diminished by the black host's humor, irresistible self-deprecation, and earthy wisdom—qualities that black women in her audience might identity with and that, in Oprah's inspiring case, helped her bypass the white standard of beauty on her sure-footed path toward power and riches. After all, Roberts is Oprah's guest, not the other way around. Oprah is the one asking the questions, and with all the self-assurance and astuteness of someone who knows the answers. With Roberts, Oprah's sharp tongue not only spoke a humble truth to powerful appearance; it repossessed, as it were, the black sensuality that collagen stole and gave to the white world.

For the middle-class white women who tune into Oprah every weekday afternoon, and who don't look like Roberts, the liberation from Hollywood standards—and from beauty magazine standards and fashion-world standards—is absolute. The star is being torn down with the movie that must have driven tens of thousands of white suburban girls into eating disorders. Roberts actually has to fall back on the unreality of a character she played in a film to defend herself against the real, the very real, woman sitting before her! Even as she treats ordinary wounded people like celebrities and eases celebrities into talking about their ordinary setbacks, disappointments, and wounds, Oprah has created and appeals to a kind of fourth race—the Oprah-people—which is not white, black, or celebrity. The Oprah-people stay glued to her show, because Oprah speaks to their true existence, the life they live away from the glamorous images purveyed by television and the movies.

The secret of Oprah's success on television is precisely that her show has been, until the recent "reality" craze, the antidote to the images of ideal happiness and physique that appear on television. From her first talk-show gig in Balti-

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more hosting "People are Talking," in which an overweight, awkward Oprah brought equally ordinary people in front of the cameras to speak with her, she has always thrust life in the face of imperial television. Think of it like this: The media is Caesar. Having mastered and then revolutionized its idiom, Oprah is Christ. Like changing water into wine, she has managed—through her elevation of hidden, obscure, or neglected experience into spectacle—to make the television set watch *you*.

As the culture focused more and more narrowly on personality—on *you*—Oprah brilliantly expanded her format to put personality at the center of radically diverse experiences. One day, she had physical makeovers (she was almost two decades ahead of shows like "Extreme Makeover"). The next, you "met" a woman who returned home to find her four children shot dead by her ex-husband. After that, a deep commiseration with thin, pale Renée Zellweger over her ordeals with the paparazzi. Then a convening of Oprah's Angel Network, a charitable club that saved enough spare change to send 50 poor kids to college for four years. Or cooking with Paul Newman, or weeping with Sidney Poitier, or hugging Diana Ross. Then a disfigured young victim of a drunk driver meeting with the driver's mother. Followed by "Your Wildest Dreams." And then a psychologist—Dr. Phil for a while, until he started his own show—or spiritual guru. And then a new book on Oprah's Book Club, almost always about a woman: a neglectful mother, a neglected daughter, an abused wife. Oprah has distilled the total American environment into a unified experience that is accessible to every individual ego.

There's something more, too. Something remarkable. A single week of Oprah takes you from bondage to all the violent terrors of life, to escape through vicarious encounters with celebrity, to visions of charity and hope, to hard resolve, to redemption and moral renovation. And running through these thoughts and sensations is the constant motif—reinforced by self-help gurus—of growth and strength through suffering. In other words, not even 50 years after segregation, America's first black billionaire is offering to her mostly white—if the composition of her studio audience is any indication—female, middle-class audience something fairly extraordinary. She is presenting to them the essential structure of the slave narrative of the antebellum South, right down to her Book Club's quest for literacy.

For all the show's seesawing between horror and inanity, and precisely because of its cunningly orchestrated subtext of racial catharses—à la the exchange with Roberts—"The Oprah Winfrey Show" is a racial utopia based on the exchangeability of colorless human pain. There is something beautiful and profound about that. As democracy seems more and more to be defined by the number of people who become rich—not many—Oprah's show has gotten more and more popular. In Oprah's universe, democracy is defined by the number of people who are "empowered" by knowing that their sadness and frustration is shared by other people—a lot of other people. It is a kind of egalitarianism from within.

Oprah has said, "If there's a thread running through each show we do, it is the message that 'you are not alone.'" No wonder either Oprah or her guest is almost always weeping. The fluidity of tears—the oceanic melting of the ego in high feeling—represents the essence of Winfrey-democracy. We are not alone because we can blur into another person or become another person at any moment. We can make over our appearance, achieve our "wildest dreams," or be heartened by the evidence of charity or by the revelation that the rich and famous are creatures of feeling, too, which makes their lives possibly habitable phases in the spectrum of exchangeability. And, if the very worst happened, and we came home to four murdered children, we would know what to expect, having been there, in a way, before. We would not be alone then, either. "Tears, tears, tears! / In the night, in solitude, tears," wrote Walt Whitman, the poet of American democracy. "Moist tears from the eyes of a muffled head; / O who is that ghost? that form in the dark, with tears?" Well, it could be anybody. Almost anybody at all. Oprah has accomplished an amazing trick, or even a miracle: She has turned living vicariously into living authentically.

Every "Oprah Winfrey Show" has about it the aura of Oprah's own life, just as the rituals and sacraments of a religion are suffused with the life of the religion's founder. Above the testimony of Oprah's guests hovers what viewers know about Oprah's experience. This is not unlike watching an actress like Nicole Kidman, over whose film characters hover the facts that we think we know about the real Kidman. Yet, in Oprah's case (as in Kidman's) we know only what we have officially been told. One of the ironies of Oprah's success is that this woman, who has made a gospel of publicizing private life, scrupulously keeps fans in the dark about her own.

What we do know, from scores of hagiographies, certainly sounds like an inspiring American story. Born in 1954 to an impoverished, teenage single mother in Kosciusko, Mississippi, Oprah was raised by her grandmother there, and then by her mother in Milwaukee. She also lived part of the time in Nashville with her soldier father and her stepmother, both of whom gave her a love of reading. She received excellent grades in an Upward Bound program at an all-white elementary school in Milwaukee, then achieved academic success in high school in Nashville, where she was elected vice president of the student council. Around that time, Oprah was chosen, along with another student, to represent Tennessee at the White House Conference on Youth. A few months later, she entered and won a beauty contest, which led to a part-time job doing newscasts at a local radio station. At Tennessee State University, she majored in speech and drama. She won two more beauty contests, and major ones: Miss Black Nashville and Miss Black Tennes-

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see. Before graduating from college, she landed her first TV job as a newscaster for a news show on a CBS affiliate in Nashville. From there, she went on to Baltimore, Chicago, and fame.

All the while, she was testing different styles of presenting herself. It was in Chicago, a year before her show went national, that Oprah's intimate style broke new ground. In 1985, she announced on the air that she had been raped by her cousin when she was nine. She later revealed that, the following year, a friend of her cousin started molesting her, abuse that she says continued into her teens. Pregnant at 14—she won't say by whom—she had the baby, who she says died. Around that time, in 1968, Oprah also claims that an uncle sexually abused her.

Oprah's public narrative of private victimization shadows every moment of the narratives that get spun on her show. It floats above her choice of books and authors for her Book Club: One of her idols, Maya Angelou, was also raped as a child; one of her first Book Club choices, *She's Come Undone*, by Wally Lamb, is about an obese young girl who is raped. Oprah's public story flickers in her choice of all the victims of sexual abuse among her guests. And it's present—a shadow that accentuates the light—in her works of charity, like the $10 million she recently donated to house victims of Hurricane Katrina: Out of great pain, goodness.

The Oprah tale is, as they used to say, a paradigm shift. In place of Horatio Alger's Protestant ethic–driven rags-to-riches story, Oprah's is a Christian fundamentalist–driven tale of the power of faith and grace. It's not that Oprah hasn't worked hard to get where she is. One of the most appealing things about her has got to be that she always looks exhausted. Oprah has always worked superhumanly hard, it seems, but the object of her work is different from the traditional Alger-type jobs: rag-picking, selling newspapers, et cetera. Oprah's work has been her own life. That is her ministry.

Like any great artist mastering a genre in order to recast it, Oprah has revolutionized the presentation of self on television through the total deployment of every dimension of her life. Her artfulness reached the peak of perfection the very same year that she went public with her tale of sexual abuse. In 1985, she landed the role of Sofia in Steven Spielberg's film of Alice Walker's *The Color Purple*. Like Oprah herself, Sofia was the victim of brutal male abuse. In one stroke, Oprah used her life to capitalize on her role and her role to capitalize on her life. And, by successfully transmuting herself into the fictional character, Oprah could prove to her fans the essential premise of her show: the fungibility of American experience. Exchangeable lives were possible through the democratic vessels of emotion and pain.

In TV terms, Oprah's multiplication of herself into simultaneous actual, fictional, and didactic selves was on the order of Picasso inventing cubism. But Oprah didn't stop there. Another story shadowed her public one, just as her public tale shadows every episode of her professional existence. Though she claims to have been romantically involved for years with a man named Stedman Graham, a businessman and former professional basketball player, the two have never married. Naturally, gossip has circulated for years that the relationship is a sham and that Oprah is actually gay. Provocatively enough, Oprah rarely refers to Graham on her show. Instead, her most frequent references are to Gayle King, an intimate friend of Oprah's since Baltimore. So, rather than refute rumors that she is homosexual, she seems to subtly encourage them—in fact, her official story is that she and King first formed an attachment when a snowstorm forced them to spend the night together.

Her detractors cry hypocrite. But there is nothing hypocritical about having a private life. If Oprah is in a fake romance, and if she is gay, neither reality would contradict her public advocacy of courage, fortitude, and growth through suffering. Rather, her seemingly calculated intimations of a hidden second life only strengthen her hopeful message of ceaseless personal possibilities.

Oprah's response to skeptics has simply been: "I don't make things up." The success of her life affirms the veracity of her life. Oprah: "My initial dream for myself was to be able to stretch out of myself and create work that would touch people's lives." To stretch out of herself and to create work—once you stretch your life into your work, you are no longer responsible for what you do. Only for what you are. And you can *be* something different—anybody different—from minute to minute. Nobody questions the genuineness of someone who has just changed jobs. Being means survival, and survival is incontestably good. You measure what you *do* by its effectiveness at helping you achieve what you are and what you want to be. "Thank you for saying that," Oprah often declares to a suffering guest who admits her weakness or culpability, thus indicating a desire to change. The power of proclaimed purpose matters more than the density of a done deed.

THE JAMES FREY scandal, beaten to death by the press, horrified Oprah. If you live on planet Earth, you probably know the story. *A Million Little Pieces*—Frey's memoir detailing his drug addiction, descent into crime, time in jail, redemption, and reform—was selected by Oprah for her Book Club. As a result, *A Million Little Pieces* became a sensational best-seller, earning the 36-year-old author a small fortune. It turned out, though, that Frey had made up substantial sections of his autobiography.

Oprah at first defended him, and then, when she became convinced that he had indeed fabricated his story—or when she saw the tide of opinion turning against her—she had Frey back on her show, where she scolded, shamed, and publicly rebuked him. Almost immediately after that imbroglio, she turned to her old friend, Elie Wiesel, whom she first had on her show in 1993. She made *Night*, Wiesel's 1956 semi-autobiographical account of his captivity as a boy in Auschwitz, her next Book Club pick. Some people saw

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this as a cynical attempt to use the subject of the Holocaust as a shield to make herself impervious to any further criticism about Frey. You might also suspect Oprah of using Wiesel to make a self-exculpatory point: *Night* is no less semi-autobiographical than *A Million Little Pieces*, yet no one ever questioned Wiesel's honesty.

A few commentators ventured that Oprah had gotten what she deserved. Frey, they said, had modeled his book on Oprah's successful formula of sin and/or suffering, leading to expiation and/or redemption. Such a phony "template," to use the trite term, had finally boomeranged into her comeuppance. But, of course, there is nothing phony about Oprah's inspiring, exemplary life: "I did it, and so can you." There is nothing false or artificial about the consolation she brings people; or especially about the way she has transposed the experience of the black ordeal onto white suffering, putting both races in the same hourly daytime boat. She may have done more for black-white relations in this country than anyone since Martin Luther King Jr.

Oprah didn't get what she deserved. What she got—and what horrified her—was a reminder of who she was, or wasn't. Frey had not followed some daytime TV formula; he had absorbed Oprah's most essential lessons. Like everyone, Frey had a life that unfolded in a singular, definite way. But, in *A Million Little Pieces*, he stretched out of himself and created work that touched other people's lives. He turned his life into his job.

Just as Oprah created a talk-show host named "Oprah," making that character her work, improvising on it and experimenting with it, so Frey created a character named "James Frey," and improvised on it and experimented with it. He didn't need to act on the Winfreyist principle of exchangeability by feeling someone else's pain. He imagined a new persona for himself, constructed out of pain he had actually felt, and then proceeded to play his new role. After all, a person is free to do whatever he wants with his own pain. In this sense, Frey was not lying about his life. He was making his life his work, and, since work is a process of development and life is always open-ended and fragile and provisional, it can take any form you want it to take as you proceed toward your goal. Frey was doing what he had to do in order to be who he knew he really was, and who he wanted to become.

Every person and every ideology has its countertendency. With Frey, Oprah's countertendency surged into public view. The reverse side of making your life your work is a life in which your actions become mere propulsions along the rails of self-advancement. You are not responsible for what you do because your truth as a person lies in the future as your "goal." You don't tell lies, because what might seem like a fabrication to other people is the expression of your genuine feeling, which is authorized by who you know you really are and can be in the future. We are taught that "the end justifies the means" is a ruthless, amoral approach to life. But Oprah has taken that sword-like precept and beaten it into a benign ploughshare of planting, cultivation, and growth. She has made the sincerity of a statement more important than the content of it. Which is to say, she has made it virtuous to be amoral. *After all you have been through, you deserve this.* Oprah did it, and so can you.

Like Oprah herself, Winfreyism has an equally fraught countermotion. The reverse side of a democracy based on exchangeable feelings is the creation of a kingdom of mere sensations, in which no experience has a higher—or different—value than any other experience. We weep and empathize with the self-destructive mother, we weep and empathize with Sidney Poitier, we weep and empathize with the young woman dying of anorexia, we weep and empathize with Teri Hatcher, we weep and empathize with the girl with the disfigured face, we weep and empathize with the grateful recipients of Oprah's gift of a new car to every member of one lucky audience, we weep and empathize with the woman burned beyond recognition by her vicious husband. In the end, like the melting vision of tearing eyes, the situations blur into each other without distinction. They are all relative to your own experience of watching them. The fungibility of feeling is really a reduction of all experience to the effect it has on your own quality of feeling.

In fact, Oprah's universal empathy has an infinite flexibility. When critics complained that she focused too much on stories of physical and emotional horror, Oprah quickly responded, in the early '90s, by mocking that very format. Publicly vowing to start diversifying her show, she immediately incorporated lighter fare more frequently. Several months after Jonathan Franzen dissed her Book Club, an incident that gave rise to a heated debate over its true function and value, Oprah disbanded it. (It has returned, but in a more peripheral and occasional way.) The Frey incident sent her spinning in appeasement yet again.

One of Oprah's most powerful visual metaphors is how she utterly transforms her appearance—her hairstyle, mode of dress, type of jewelry, even her manner of speaking—from day to day. It is her clever, dramatic embodiment of the possibility of personal change and growth. But ability to change is also a capacity for accommodation. It hints at a personality that will "stretch" itself in any rewarding direction, unconstrained by truthfulness or consistency. Unconstrained by the constraint of character, you might say.

The name Oprah gave to her production company—her business—is Harpo Productions, which is "Oprah" spelled backward. That is exactly right. Winfreyism is the expression of an immensely reassuring and inspiring message that has, without doubt, helped millions of people carry on with their lives. And it is also an empty, cynical, icily selfish outlook on life that undercuts its own positive energy at every turn. On her way to Auschwitz, sitting in her hotel room in Krakow, thinking about the masses of people who were murdered in the death camp, Oprah wrote in *O*, "I have never felt more human." Her empathy and moral growth seem to require human sacrifice. Yet watching Oprah does fill you with hope. It also plunges you into despair. She has become something like America itself. ■

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BOOKS & THE ARTS

STANLEY KAUFFMANN ON FILMS

Early Years

THE TITLE OF A NEW FILM book is misleading. **ADVENTURES OF A HOLLYWOOD SECRETARY: HER PRIVATE LETTERS FROM INSIDE THE STUDIOS OF THE 1920S** (231 pp., $19.95) sounds a bit naughty. But the name of the publisher—University of California Press—and the foreword by Samuel Goldwyn Jr. soon sober us up. Some naughtiness does come along, but it is peripheral: the book is interesting for other reasons. This is simply the correspondence of a young woman who worked as a secretary to Samuel Goldwyn *père* and many others and who wrote letters to a girlfriend back east, talking about her work and the glittering people she met. Her letters don't tell us anything factual that isn't already known, but they make a pleasant personal adjunct to early Hollywood history.

ADVENTURES OF A HOLLYWOOD SECRETARY: HER PRIVATE LETTERS FROM INSIDE THE STUDIOS OF THE 1920S
Edited by Cari Beauchamp (University of California Press)

WAH-WAH
(Samuel Goldwyn Jr.)

Valeria Belletti, the daughter of Italian parents, was born in New Jersey in 1898. Before she was sixteen, she got her first job, as a secretary in a New York law firm. By 1923 she became restless and decided to visit California with her friend Irma Prina, telling Irma that if she liked California she would stay. She did like it and did stay—luckily for us. Irma returned to New York, and, beginning in October 1924, Valeria began writing to her with long and full accounts of her doings. Irma kept these letters, which eventually came into the hands of Valeria's daughter-in-law. They then were passed along to Cari Beauchamp, who has written a biography of Frances Marion, the first famous woman screenwriter. (Marion figures prominently in Valeria's letters.) Beauchamp has edited and annotated the letters, and the result is, to my knowledge, a unique perspective on the early film world.

Biographies abound of people who were directly involved in film-making, but this is the life of someone who, though she was in the business, was something of an observer—a quiet, sociable young woman who found herself on the bank of a rushing stream. After some interim California jobs, she writes to Irma in February 1925: "I just had to write to tell you of my good fortune. I'm in the movies—of course, not an actress. I'm private and social secretary to Mr. Samuel Goldwyn. Can you imagine it!" The boss was in Europe: she didn't meet him for three months. Meanwhile, she met, among others, Ronald Colman—"a very charming young man. Have you seen him in pictures yet? His latest was 'A Thief in Paradise.'" He must have liked Valeria. The following month she writes: "As for Ronald Colman—well—he's what I call a sheik. By the way, you know I'm his secretary, too. I have to look at all his fan letters and when there are any particularly funny, I show them to him." Thus, relatively calmly, she informs her friend that she resides in the inner temple of what was then a global worship.

Goldwyn had a reputation as a tough boss, but a few weeks after his return she writes that he "hasn't 'jumped down my throat' yet.... I have to write nearly all of Mr. Goldwyn's letters because he certainly doesn't know anything about grammar. He signs all the letters I write for him and so far hasn't made any comments so I presume they suit him." In a way this is sort of a compliment to Goldwyn: he couldn't write a letter, yet he was running a successful film studio. One member of his staff was the director Henry King (whose career flourished until 1962). "Mr. Henry King hasn't a secretary yet, and I have to do work for him as well as do little personal things for Ronald Colman," Valeria reports. Her admiration for Colman flickered at one point—no reason given—but soon afterward she writes: "He is ideal—but I could never get excited over him—he is just a trifle too ideal to make me realize he is human. I like our fat little publicity man more."

In June 1926 she meets Gary Cooper: "I don't expect anything to develop out of this affair" (it is unclear what she meant by that word). But something did indeed develop. A month later she writes: "Do you know that boy I raved to you about, Gary Cooper? Well I raved so much about him to Mr. Goldwyn, Mrs. Goldwyn and Frances Marion and our casting agent—in fact to anyone who would listen to me—that Mr. Goldwyn finally ... asked our manager to sign him up under a five year contract."

The range of Hollywood money becomes clear. Five months or so after she started, Valeria writes that since Goldwyn seems pleased with her work, "I'm going to strike them for a ten dollar raise in about two months. I can't very well ask for more now, because in the next ten weeks we'll be spending about $600,000 on the new pictures and it would be rather an inopportune time to ask for it." But if all goes well, "I'll get a big salary. I imagine something like $75 per week." Her friend Colman was then getting $2,000 per week—in the low-tax 1920s.

Goldwyn joined United Artists in 1925, so Valeria was soon in the neighborhood of Pickford and Fairbanks and Chaplin and Swanson and Valentino. Still, after two years with Goldwyn and the proximity of all that fame, she withdrew and went to Italy to see her father, who had long ago gone back to his native country. After six months abroad, she made her way back to Hollywood and worked again for some months as secretary for several screenwriters and for Cecil B. DeMille. Then, just about the time that the talkies were altering Hollywood, she married—not a film man—and left. The social chat in her letters has some "period" interest, but the book's insidious appeal is that it puts us in an unglamorous spot in the expanding film cosmos from which we can

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watch the glamour swell.

Note. Beauchamp makes a slip in her notes. Lita Grey was not Chaplin's "find" in *The Gold Rush*. He shot some film on her but never used it. The "find" was Georgia Hale.

Continuing to some degree in his father's field, Samuel Goldwyn Jr. distributes Richard E. Grant's first film. Grant is a swordsman of an actor: he can verbally swirl and feint and lunge in the best English high-comedy line (*Withnail and I*, *How to Get Ahead in Advertising*). Now he has written and directed **WAH-WAH**, a quasi-autobiographical film about his early years, beginning in 1969. He was born and brought up in Swaziland when it was under British control—his father was an education official—and he recreates that environment.

The directing is adequate and the acting is colorful, but the story is dim. A boy's parents, upper class and veddy English, get into sexual entanglements that lead to divorce and remarriage. The focus is on the boy's turmoil during the adults' caprices. But this is old stuff, here varied only in its setting. Much more effective are the digs at colonial English staginess. (The title is an American woman's caricature of upper-class English slang.) The best dig: at one point Princess Margaret visits Swaziland, and as she is driven, barely visible, in a closed car across a field in front of a packed, cheering stadium, one Brit says to another, "Isn't she *marvelous*?" ■

John Felstiner

Writing Zion

An exchange between two great poets.

"PERHAPS I AM ONE OF THE last who must live out to the end the destiny of the Jewish spirit in Europe." Why "must"? Writing from Paris in August 1948 to relatives in the new state of Israel, Paul Celan, having survived the "Final Solution," explains that a poet cannot stop writing, "even when he is a Jew and the language of his poems is German." This fateful pledge, from a brutally orphaned son whose stunning poem of 1945, "Deathfugue," intones, "Death is a master from Deutschland" and threads an ashen-haired Shulamith into the Hebrew Bible's Song of Songs, throws a raking light over a recently discovered exchange of letters between Celan and the Israeli poet Yehuda Amichai.

Born to German-speaking parents in Czernowitz, Bukovina, an eastern outpost of the Austrian Empire, Celan survived nineteen months of forced labor, eventually taking exile in Paris. There by hard degrees he became Europe's most challenging postwar poet. His first and only journey to Israel, in October 1969, had been long deferred for fear of yet another exile from the mother tongue. In Jerusalem, Amichai, who had left Germany as a boy with his family in 1936, welcomed Celan into his home overlooking the ancient valley across from Mount Zion.

In Hana and Yehuda Amichai's kitchen, Celan gave a radio interview. "I think that themes alone don't suffice to define what's Jewish," he remarked. "Jewishness is so to speak a spiritual concern as well." His term for "spiritual" was *pneumatisch*, "pneumatic," where *pneuma*, or wind, calls up the Hebrew *ruach*, as when God's breath hovers over the deep. Celan also stressed his Germanic patrimony: "Rilke was very important to me, and afterwards Kafka."

For a reading the next day, Amichai translated some poems of Celan's into Hebrew. "From time to time he surprised us by commenting that we could be more precise," says Shmuel Huppert, the interviewer. "He would suggest some other root, which was stored in his memory." Amichai also inscribed a recent collection of his own verse for Celan, in Hebrew, "with much love." Celan read the book closely.

At the Jerusalem reading on October 9, Amichai and the poet Manfred Winkler presented the distinguished guest. An overflow crowd, including refugees and survivors from his homeland, somewhat alarmed Celan, but his reading in German overwhelmed them. In one poem he bound what happened in Nazi-ridden Europe, his parents murdered in a Ukrainian winter, to his struggle for a fit language: "Just like the wind that rebuffs you,/ packed round your word is the snow." The audience clamored for "Deathfugue," but Celan declined. He ended by speaking a Six Day War poem of intense thanksgiving for "this piece of/habitable earth,/again suffered up into life":

> Just think:
> this came toward me,
> name-awake, hand-awake
> for ever,
> from the unburiable.

A week later in Tel Aviv, thinking of the biblical tongue revived as national vernacular, Celan told the Hebrew Writers Association: "I take joy in every newly earned, self-discovered, fulfilled word that rushes up to strengthen those who turn toward it."

BACK HOME, IN "THIS COLD city Paris," Celan felt elated at having dwelled in a free state—"No ghetto!"—with children chattering Hebrew. He wrote a letter to Amichai in which his own loss of family and homeland, his psychic wounds and postwar anxieties, twist and strain these sentences addressed to modern Hebrew's leading poet.

> Avenue Emile Zola (15e)
> Paris, 7 xi 1969
>
> Dear Yehuda Amichai,
>
> You would have had these lines long since, but I'd forgotten to make a note of your address and so first I needed to check with a friend in Tel Aviv.
>
> For me it's a most heartfelt need to tell you how happy I was to meet you,

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you and your poems, how glad I was to be with you.

I'm truly ashamed that I can find my way into your Hebrew poems only with the aid of English translations. But I've a strong impression it's just this, finding my way, that affords me what's most poetic. What really belongs to you in your poems comes through with the most convincing, most conspicuous force. You are the poem you write, the poem you write is . . . you yourself.—Right away I loaned the English selection of your work to my friend André du Bouchet, who writes poems as well, and to my great joy what had struck me came through to him too. Now this book is going round to other contributors and editors of the magazine *L'Ephémère* (I'm also among them). We'd be delighted to bring out a book of yours in French translation—is there someone in Jerusalem or elsewhere who's translated you into French, or could do so?

Unfortunately I can't offer you something similar where the German language is concerned: for a long time now I've not contributed to any German-language magazine. The changes that have happened there—involving not only the publishers' mindset, though above all of course it's that too—they've blocked my access. But as for radio, I'd certainly find one way or another—let me know about this? Manfred Winkler meant to send me, through my Tel Aviv friend David Seidmann, some German versions of Hebrew lyrics, including yours, but so far he hasn't done it.

Dear Yehuda Amichai, let me here say again what came to my lips spontaneously, in our conversation: I cannot imagine the world without Israel, and I *will* not imagine it without Israel. That I would wish to see this kept personal, not public, you no doubt understand: that way it acts with *all* its intensity. With your person and your poems, you too make me think of this over and over.

Heartfelt thanks

Yours
Paul Celan

Celan's visit to Israel buoyed him, even to the point that he imagined settling there. But this letter, written only three weeks after his return, suggests why that did not happen. For one thing, this linguistic genius makes a point of playing down his competent Hebrew. As a child he had attended a Hebrew day school and celebrated his bar mitzvah in 1933. His poems over the years often embed a key Hebrew word or phrase. The Israeli novelist Aharon Appelfeld, born on the same street where Celan lived back in Czernowitz, remembers that Celan's Hebrew in Jerusalem was good. His script was fluent, too. Ilana Shmueli, a childhood friend who had emigrated after the war and with whom Celan now reunited, recalled that "he remembered Hebrew quotations, and came up suddenly with difficult words and sentences." And a few months after this letter, he translated the Hebrew poems of David Rokeah, an Israeli also born in the Austrian Empire.

Why such diffidence about the holy tongue? Born in 1920, Celan witnessed the rise of Romanian and German anti-Semitism. With Nazism rampant in 1938, his father opted not to leave, and he went to study in France. In 1945, although—or precisely because—his mother tongue had overnight turned into his mother's murderers' tongue, he forged ahead writing in German. Friends asked, Why not write in Romanian or French? The poet clung to his lifeline: "Only in the mother tongue can one speak one's own truth."

AMICHAI ALSO HAD A GERMAN-Hebrew upbringing, but he emigrated to Palestine before the war. So the encounter between the much-loved Israeli poet, who had transformed Hebrew verse by mixing the living vernacular with the ancient biblical music, and the German-Jewish poet spoken of in the same breath with Hölderlin and Rilke, must have been fraught, daunting. Living out the destiny of the Jewish spirit in Europe was a staunch task, Celan's life's work. Carving the truth out of German in yet another exile, even the Promised Land, would be something else.

In Celan's letter to Amichai we have the courteous heart-cry of a poet surviving through his (and his new friend's) mother tongue, while encountering the challenge of Hebrew in the person and the poetry of Amichai. Two sentences betray Celan's struggle to get something crucial said. In tortuous German, one sentence says: "What really belongs to you in your poems comes through with the most convincing, most conspicuous force." The implication is surely that uprooting and transplanting himself to Israel might dissipate his own force.

The other sentence derives from Celan's oblique sense of Israel, anxious and distant. Recrudescent German anti-Semitism after 1945, plus a bogus charge of plagiarism, had terribly exacerbated his wartime trauma while stiffening his resolve. Persecution mania and mental breakdowns brought long spells in French clinics. Declaring to Amichai that he will not imagine a world without Israel, Celan then feels he must withdraw a little: "That I would wish to see this kept personal, not public, you no doubt understand: that way it acts with *all* its intensity."

A month later Amichai wrote back, immediately testing Celan's stake in him. The Israeli aligns his own destiny, in a nation welded to its revivified language, with the diaspora poet's desperate grasp on a mother tongue. In slightly unaccustomed German, Amichai then touches Celan's genius as a writer for exposing human experience in its molten form.

Dear Paul Celan,

I was overjoyed at your letter. It's truly a heavy yoke you lay on me, to carry all of Israel on my shoulders. Anyone who writes in Hebrew binds his own existence with that of the language and the people. Israel's downfall would mean the downfall of my language. All the more so, with no consolation in the permanence of the written word, of the spirit.

Dear Paul Celan, I frankly envy the way your art renders word and image *objective* (with extremest subjectivity!). My poetry, which holds forth in what's real and is prompted pragmatically by events, stands in envy of yours. My images are only the clatter of chainlinks that tie me to life's happenings.

As far as translations are concerned, I joined up with Winkler. Alas I haven't yet found a French translator for my poems.

With best regards to you and please write me again or do come back here from time to time.

Shalom!

Yours,
Yehuda Amichai

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Celan did not come back. Four months after receiving this letter, living apart from his wife and son, he walked from his apartment and (apparently) drowned himself in the Seine. Amichai wrote two elegies for him, one immediately, in a volume of poems that he published in 1971, and the other many years later, in his last book of poems. This poem begins:

Paul Celan, toward the end your
words grew fewer
and every word became so heavy
in your body
until God put you down like a
heavy load,
maybe just for a moment,
to take a breather and wipe his
brow. ■

Vali Nasr

Don't Hold Your Breath

IRAN AWAKENING: A MEMOIR OF REVOLUTION AND HOPE
By Shirin Ebadi and Azadeh Moaveni
(Random House, 232 pp., $24.95)

SINCE THE NOBEL PRIZE committee recognized Shirin Ebadi's tireless efforts on behalf of Iranian women, children, and political dissidents, she has become the international face of Iran's struggle for democracy. A judge during the Shah's time, Ebadi found herself, like many other women of her generation, pushed to the margins by the revolution's turbaned rulers. She became a lawyer and a human rights activist, building a career solely devoted to unmasking the absurdities of Iran's theocracy and fighting its archaic laws, violations of women's rights, and mistreatment of dissidents. All this is chronicled in her memoir. The book is a powerful condemnation of the dictatorship of the ayatollahs, at its best when it recounts the suffering of those whom Ebadi represented. The gross injustices and the everyday cruelties of the Islamist regime in Iran would be comical were they not so tragic.

But the narrative loses its poignancy when it shifts to the writer herself. As commendable as her efforts on the part of the victims of injustice in Iran have been, Ebadi's confused rendition of Iranian history, which vacillates between celebrating the revolution and condemning its consequences, makes it difficult to regard her as a symbol of democracy. Still, it is possible to look beyond her perplexing tentativeness and regard her story as emblematic of the paradox of a revolution that mobilized, educated, and ultimately frustrated Iranian women. Revolutionary fervor promised to break down traditional patriarchy, but in its place there appeared new discriminations. Ebadi hopes that the unfulfilled promises of revolution will finally bring a fury down upon the Islamic Republic and fracture its pious edifice. But this hope, however fond, is a distant one—more distant than Ebadi seems to understand.

To point out that the Islamic Republic falls grossly short of Iranians' expectations is to belabor the obvious. To a moderately informed reader, the tales of woe in Ebadi's book will seem nearly as predictable as they are horrid. Less obvious is a deeply troubling question that lurks in the background. What led Ebadi and her generation of educated Westernized professionals to get themselves into this bind, to be "hypnotized" by the ayatollah's revolution? Why were their rights and their freedoms so cheap in their eyes that they so hastily traded them for the will-o'-the-wisp promise of a revolutionary utopia? "I'd rather be a free Iranian than an enslaved attorney," she cavalierly told a baffled judge who reminded her that the revolution she was championing would destroy her career. What accounts for the tragic mistake of her generation, for the grand delusion that subjected the Iranian people to the ignominy of discrimination and tyranny?

Even now, some twenty-seven years after the Iranian revolution, Ebadi displays more acrimony toward the regime that recognized her rights and made her a judge, I mean the Shah's regime, than for the one that has stripped her of those rights, ended her career on the bench, executed her brother-in-law, and put her in prison. "I had reclaimed a dignity," she fondly recalls about her euphoria on the day of the revolution, one that she "had not even realized [she] had lost." She condemns theocracy, to be sure; but she remains enamored of the revolution that brought it into being. She shows empathy for its makers, even for violent terror groups such as the Mojahedin-e Khalgh Organization, whose history is soaked in blood. How can those who speak for democracy also continue to idealize an anti-democratic revolution? Perhaps this is part of the Iranian problem.

Reading Ebadi's story, one wants to think of Mandela or Havel, except that there is no happy democratic ending to her tale. Three-quarters of the way through the book, she notes plaintively: "I am often asked, Why do Iranian young people simply not rise up? If their discontent is so deep, their alienation so irreversible, if they are 70 percent of Iranian society, what explains their complacency?" It is a good question. Indeed, it is now the question on everyone's mind. Why have the youth, not to say the broader freedom-loving population, not charged the barricades in Tehran? And in the time since Ebadi wrote her memoir, such a charge has become even less likely. In the presidential election in 2005, which was supposed to have energized pro-democracy voices and isolated the clerical regime, a clear majority of Iranians voted for Mahmoud Ahmadinejad, a favorite son of the fanatical paramilitaries. Stepping beyond Ebadi's message of hope, then, it is fair to ask whether her tale of woe and horror, of courage and youthful rebellion against tyranny, really explains Iran today.

FOR CLOSE TO A DECADE NOW, Iran has been tantalizing and baffling the West. No other country in the region is so close to and so far from democracy. With its youthful, literate, and Web-happy population, with thousands of activist NGOs, with more women in universities than

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men, and with a measure of cultural dynamism that is unique in the Middle East, Iranian society has stood in sharp contrast to the clerical leadership that is suppressing it. Persian is today, after English and Mandarin Chinese, the third most popular language online, where one can surf tens of thousands of Iranian blogs. Offline, hundreds of widely read newspapers, magazines, and periodicals host thinly disguised intellectual and political debates. Iranians also get their news and views from a myriad of international sources. The BBC's Persian website at one point received 450,000 hits a day. On satellite television, Iranians watch everything from CNN to *The NewsHour with Jim Lehrer*.

There are lively discussions about Western thought. Full-page debates over postmodernism often adorn the pages of popular dailies, while seminars and lectures regularly discuss Western thinkers from Hegel to Samuel P. Huntington. Iran's spirited book market has for many years now dwarfed the oft-repeated statistics showing the paltry quantity of translations in the far larger Arab world. Foreign tomes that seem as if they might be helpful in prying open Islamic orthodoxy are particularly popular. There have been more translations of Kant into Persian in the past decade than into any other language, and these have gone into multiple printings. (One is by the current conservative speaker of the Iranian parliament.) In some areas of mathematics and physics, such as string theory, Iranian research centers rank among the best in the world. Iranian cinema has in recent years become a powerful force at home and abroad.

WHAT THIS DYNAMISM SIGnals is that the revolution is over. Such a conclusion is inescapable. But it is not all that one needs to know. It does not follow that this new cultural energy will lead to a new political energy. The expectation that a democratic opening must follow this cultural revival has turned to disappointment. Iran's youthful cultural dynamism has not only failed to produce democracy; it has failed even to produce a credible pro-democracy movement.

In truth, Iran has been an improbable candidate for a flowering of democracy. The Islamic Revolution of 1979 created the only Islamist state to result from a successful Islamic-fundamentalist drive for power. An idealized Islamic order enforced by an all-powerful state was the point of this revolution. Democracy had nothing to do with it, not even rhetorically. Still, in the quarter-century since Khomeini came to power there has been significant progress toward democracy, permitted (and manipulated) by a regime hungry for legitimacy as revolutionary zeal has drained away like water from a cracked pool. Iranians have embraced many democratic practices, participated in elections at local and national levels, and believed that their votes affect political outcomes. In 1997 a reformist cleric, Mohammad Khatami, won the election in a landslide after the unelected Supreme Leader Ayatollah Ali Khamenei openly endorsed Khatami's conservative opponent. Iran is the only country in the Middle East where two heads of state have stepped down after the ends of regular terms and retired undisturbed to their homes.

Since the Shah fell in 1979, there have been nine presidential elections and seven parliamentary elections. While clerical rulers vet candidates strictly and shut out thousands of them, citizens take the campaigning and the voting seriously. The voting age is fifteen. An entire generation has now grown up with ballots and promises from politicians, with the lofty ideals of democracy as well as its more mundane mechanics. It is not uncommon for far-flung villages to have elected councils. The deep flaws in the process have not prevented Iranians from learning about democratic practices and internalizing democracy-friendly values.

Ironically, this tendency is strongest among the poor and pious masses, who form the clerical regime's broadest base of support. These plain folk have always taken elections seriously, rallied and voted enthusiastically, and accepted the legitimacy of their results without question. So Iran is not saddled with the problem of democratic practices hitting the impenetrable rock of traditional values. The Iranian constitution vests sovereignty in God, but Iranian politicians look to the people for their mandate. Even the conservative wave that recently swept the hard-line Ahmadinejad to power relied on the ballot box. The problem is not with the embrace of democratic practices, but with their full and effective enshrinement in politics.

Iran had a democratic opening of sorts with Khatami's first election, by a 70 percent majority, in 1997. People expected that their electoral rejection of the dour senior clerics and their war with the world would make civil society, people power, and cultural opening the hallmarks of the future. Khatami, with his talk of "the dialogue of civilizations," the rule of law, and the status of women, seemed to be the man for the hour. After all, citizens had been able to vote for a reform candidate against the wishes of the top clerics—and the result had stood. This emboldened the forces of Iranian civil society to demand fundamental changes. And this led to a short-lived "Tehran Spring," as Ebadi puts it, during which the language and the style of politics began to change. By 1998, there were 740 newspapers in circulation, and political debate became rampant, and revolutionary dogma was openly challenged by calls for intellectual and artistic freedoms. The demand for change even extended to clerics such as Ayatollah Hossein-Ali Montazeri, Khomeini's one-time heir apparent, and to his student Mohsen Kadivar, who openly criticized the Islamic Republic's authoritarianism and spoke of reconciling Islam with democracy.

BUT KHATAMI FAILED TO LIVE up to expectations. He spoke of democracy, but he did little to implement it. His emphasis on the rule of law in the absence of constitutional reforms had the effect of tightening the grip of the country's unelected clerical rulers, who used the judiciary and the appointed Guardian Council—as well as allies in the media, parliament, and various government agencies—to stiff-arm reform. The ineffectual Khatami repeatedly lost ground on press freedom, the rule of law, individual rights, and other matters. During his eight disappointing years in office, the Guardian Council blocked fully one-third of Khatami's legislative agenda.

Nor was the regime afraid to break heads. In 1999, in Iran's version of the Tiananmen Square massacre, the security forces, along with shadowy paramilitaries such as the Basij militia, brutally suppressed pro-democracy student demonstrations. During violent attacks on university dormitories and later on street marches, several students were killed and many more were injured. The attack was a turning point. Khatami faced a choice: he could call for an end to dictatorship and stand with his followers in the streets, like Boris Yeltsin atop a tank in Moscow

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in 1991, or he could back down. He chose the latter course, chastising the students for breaking the law and telling them to go home. Thus the march toward democracy became bogged down in a losing war of attrition with Iran's wily, ruthless, and stubborn clerical rulers.

Looking back on those years of hope giving way to despair, it is possible to conclude that perhaps most observers of Iran got it wrong. Reform was not the only game in Khatami's town, and an enthusiastic pro-democracy movement was not fated to take charge of Iran's future. In the end, the Khatami era proved to be less about democracy than about a surging wave of reaction. The ruling clergy read Khatami's victory as a warning that Iran was moving on a course which, left unchecked, would destroy the Islamic Republic. They launched an effective counter-mobilization, taking the battle to the reformists, beating them soundly, and emerging from the struggle stronger and more confident.

THIS IS THE IRANIAN REGIME that we are dealing with today. When, in 2003, students demonstrated to mark the anniversary of their 1999 rising, they found scant enthusiasm for taking on the regime and its brute force. A year later, when reformist parliamentarians protested the Guardian Council's banning of 3,600 candidates (including eighty incumbents) in advance of the parliamentary elections, hardly any demonstrators showed up. Few heeded the then-jailed dissident Akbar Ganji's call for a boycott of the presidential elections in 2005, and no more than a handful could be found holding a vigil outside the notorious Evin prison during Ganji's much-publicized hunger strike. Ganji's bold challenge to theocracy is popular, but few are willing to accept the risks of protesting for it. The undercurrent of desire for democracy remains strong, but the democracy movement is a fizzle.

A visitor to Tehran can easily find parties where alcohol (and drugs) flow freely, and where young men and women mix without regard for draconian morality laws. But fun-loving kids eager to explore the extremes of hedonism and social freedoms do not make heroes. They are a far cry from their elders, who a generation ago challenged the Shah with a brazen idealism gleaned from Mao's little red book. The youngsters who braved the Shah's army were revolutionaries in the true sense, willing to risk all for a utopian ideal. Iranians today seem to want regime change, but at no cost. They value freedom, but they value stability more.

More confusingly, freedom, of a sort and up to a point, is something that the regime is willing to grant them. As the election in 2005 drew near, leading conservative contenders began promising greater cultural freedom but no political reform. Ali Akbar Hashemi Rafsanjani, the ex-president and billionaire oligarch, and Mohammad Bagher Ghalibaf, the Revolutionary Guard general and student-suppressing police commander, re-invented themselves as moderate and pragmatic strongmen willing to tolerate a modest cultural opening while safeguarding social and political stability. These Putin-like figures adopted secular and youthful themes and ornamented their campaigns with pop music and stylish dress. Ghalibaf's transformation was particularly jarring. He traded his uniform for a suede jacket, hip glasses, and a beard trimmed down to Armani-style fuzz. Rafsanjani and Ghalibaf made headway into the reformist base of support, but they failed to win the big prize.

Iran's youth—30 percent of the country's population is between fifteen and twenty-nine years of age—is not a monolith. Not all are driven by the desire for looser mores. Vast numbers need jobs that an economy ravaged by revolution, war, and a crushingly bloated public sector cannot give them. Since Khomeini's death in 1989, Iran has tried to reform its economy by investing in infrastructure and pursuing privatization. Many among the elite, but also the middle class, have benefited from this change—but not so the legions of the poor and unemployed. Iran still has unemployment of close to 20 percent. The income per capita is a quarter of what it was in 1979, and on average Iranians eat less protein than they did before the revolution.

Greater room for entrepreneurship (and a measure of corruption) has energized the private sector. The newly rich, clerics and businessmen alike, quickly changed the dour face of revolutionary Iran with conspicuous consumption and an appetite for things Western. Khomeini-style austerity became a thing of the past. But beneath the glitz there remained the frustrations of the poor,

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by some accounts as many as 40 percent of the population. While the affluent may have turned their attention to political freedoms, those who felt left behind amid the economic reforms nursed resentment at the growing economic disparities, and also at the cultural freedoms that they associated with the wealth at the top. This anger would lend itself to the anti-reform backlash and decide the presidential elections of 2005.

The clerical rulers grasped the social dynamics of the 1990s better than the reformists did. The regime understood that the multitude of Iranian poor wanted not freedoms but jobs. Economic reform, and not political reform, would therefore be the key. Senior officials began to talk of a Chinese model: economic restructuring to generate growth, but not political change. And so the Islamic Republic overnight became development-oriented. When the conservative establishment formed a political party to contest the parliamentary elections in 2004, it was called the Developers' Coalition. More astute elements in the regime saw development as a still-distant goal, one that would for a time widen rather than narrow the gap between rich and poor. They saw a quick fix in manipulating the anger of the poor against the rich, constructing a populist platform—much like those of Hugo Chávez in Venezuela and Evo Morales in Bolivia—in order to garner the votes of the poor. With oil prices high, populism seemed more feasible than ever.

Enter Mahmoud Ahmadinejad. He is a fanatic, a throwback to the zealotry of the Khomeini years, who had plied his trade in the dreaded paramilitaries until he was recruited as the populist face of the conservative reaction. Throughout his campaign, Ahmadinejad traveled to poor provinces and promised to end social and economic disparities. He blamed economic problems on the private sector and its reformist supporters in government, and he promised to end privatization, protect state subsidies, alleviate poverty, invest in infrastructure, and create jobs. It hardly mattered that his harangues made little economic sense. They were precisely what those whom economic change had left behind wanted to hear. Ahmadinejad showcased his humble two-bedroom home in a poor neighborhood of Tehran while his supporters handed out CDs showing Rafsanjani's gilded lifestyle. Ahmadinejad wanted to be seen as one of the revolution's downtrodden masses, the so-called *mostazafin*, fighting the fat cats whose greed and corruption had betrayed the revolution's populist goals.

After he won, Ahmadinejad further cultivated the image of the humble outsider, refusing to travel in the presidential jet or with a motorcade. He once flew commercial to a provincial capital with his entourage of twenty, and then took a taxi to the governor's office. He promised to transfer wealth to the poor and to raise their standard of living. He threatened to scuttle Tehran's stock market, and he slashed interest rates—measures that he claimed favored the poor, but which led to devastating capital flight. Parliament blocked his idea for an extravagant "marriage fund" to help struggling young people form families, but his constituency cheered his effort. Most of his fiery speeches denouncing Israel, doubting the Holocaust, and confirming Iran's determination to plod ahead with its nuclear capability are given to cheering crowds in small towns in far-flung provinces.

This political provincialism is not necessarily a sign of naïveté. Ahmadinejad understands that Tehran's political significance has shrunk, that Iranian politics has become increasingly local. He knows retail-level electoral tactics—which probably mattered more than ideology for his victory—and that in the provinces bread-and-butter concerns dwarf the debate over democracy. Unlike the Eastern European communist rulers who had lost their peoples by the 1980s, Iran's hardliners know that they have a solid and zealous 18 to 20 percent base among die-hard elements drawn from war veterans, paramilitary cadres, and their families. Ghalibaf assembled focus groups to branch out from there by capturing the mood of the middle class and urban youth, but Ahmadinejad's skillful use of populism proved him the better strategist.

Since the 2004 and 2005 elections, conservatives have mostly left the middle classes and urban youth alone, so as to focus on appeals to the poor. Ahmadinejad even conceded to a reformist demand by declaring that women could attend soccer matches in stadiums (Iran's most prominent public places), thereby angering senior clerics. Many student leaders, as well as Ganji, Iran's leading dissident, have been released since Ahmadinejad's election, as if to say that the reformists simply do not concern him. (This may be changing, though: last month Ramin Jahanbegloo, a well-known intellectual, was jailed on a trumped-up charge of espionage, but more likely for having criticized the theocracy.)

Not all Iranian youth are secular. Many share the regime's values. The past decade has seen a resurgent folk piety, especially among the young, which deviates from Khomeini's puritanical, anti-ritualistic version of Islam. In recent years, major holidays such as Ashura have taken on the quality of youth festivals, sometimes mixing devotional practices with Westernized music, to the ire of purist clerics. Most notably, there has been a growing devotion to the Shia messiah, the twelfth imam or Mahdi, whom Shia Muslims believe was miraculously hidden from ordinary human perception one thousand years ago, to return at the end of time. Signs of devotion to the Mahdi are ubiquitous in Iran today—most noticeably among otherwise Westernized young people. Some years ago I visited the Jamkaran Mosque outside the clerical city of Qom. The mosque gained fame when Ahmadinejad, soon after his election, dedicated millions to its repair and sent an official to pledge the government's commitment to hastening the return of the Mahdi, who is said to have once appeared at Jamkaran. The faithful flock to the mosque from near and far, much like the Shrine of the Virgin of Guadalupe in Mexico. During my recent visit, Jamkaran was teeming with young people, many in up-to-date Western clothes and hairstyles; and only Ahmadinejad seems to have grasped the political implications of this youthful religiosity.

Faced with such cagey hard-line rivals, the reformists fell into a long debate over whether to call for a voter boycott (as urged by the jailed Ganji). And by the time the reformists realized that they would have to take the election seriously, the conservatives had defined the race. The best-known reformist candidate, Mohammad Moin, was a reconstructed revolutionary with a checkered past but no charisma or imagination. Worse yet, reformists had no plan for rallying the diverse groups that should have voted for them. Too many candidates were chasing the same reformist voters, who also harkened to appeals from moderate conservatives such as Rafsanjani and Ghalibaf. And so more or less reform-friendly

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candidates arguably took sixteen million of the twenty-seven million first-round votes, but divided they fell. Moin, the top clear reformist in the race, finished fifth.

Beneath the reformists' tactical confusion lay strategic and philosophical confusion. Their pro-democracy message was an uncertain trumpet, as they wavered between calling for complete change and saying that reform of the Islamic Republic could suffice. Should theocracy be mended or ended? Reformists could not say. They held study groups on the constitution, but they split over what constitutional change should mean. Some, including professors and secular lawyers such as Shirin Ebadi, spoke of a new liberal and non-theocratic constitution. Others, such as the Ayatollah Montazeri, wanted to rescind only those post-Khomeini changes that had strengthened the position of the Supreme Leader. Some even looked back at Khomeini with nostalgia as an honest man of the people.

Ebadi's memoir is a palimpsest of reformist equivocations. In her view, democracy includes neither those who never supported the revolution nor the millions whom the revolution turned into refugees and forced into exile. Iranian expatriates—including, one would presume, her expatriate co-author, Azadeh Moaveni—stand outside her vision of Iran, as if they are traitors. "When someone leaves Iran," writes Ebadi, "it as though that person has died for me." In a chilling passage, she describes erasing the names of friends who fled Iran from her address book and never putting pen to paper to write them. Exile in Ebadi's eyes is a scarlet letter, forever excluding those who fled from the revolution that she celebrates. Her democracy movement is a meanly limited group of former revolutionaries whose folly brought Khomeini to power and who now want to move beyond his legacy.

THE DEMOCRACY DEBATE IN Iran has never concerned itself with lunch-pail issues. During the elections it was left to the obstreperous cleric Mehdi Karroubi—a relic of the early years of the revolution and an adviser to the Supreme Leader, who has lately gravitated toward reform—to put forward an economic argument. He promised that if elected, the government would give every Iranian the equivalent of $50 a month. That is hardly a substitute for a coherent economic policy; but the proposition was attractive to many voters in a society with rampant unemployment. Karroubi can be credited with bringing many more people than expected to the polls, and also for taking votes away from the main reformist candidates by presenting a reformist version of Ahmadinejad's populism.

Reformists were slow to realize that by the end of Khatami's term, democracy meant not prosperity, but gridlock and ineffectual government. A pro-reform businessman told me the sordid and paradigmatic story of the Imam Khomeini International Airport, supposedly a showcase and a gateway to world trade and tourism. Shortly after Khatami opened it in 2004, the Revolutionary Guards closed its runway, complaining (in a weird foreshadowing of the ill-fated Dubai ports deal in the United States) that the airport's Austro-Turkish management consortium had dealings with Israel, and that this posed a threat to Iran's national security. In reality, the Guards coveted the lucrative contract and wanted to run the new airport as they had the old one. The airport stayed closed for nearly a year as costs piled up, and an embarrassed Khatami had to cancel a state visit to Turkey, and the transport minister faced impeachment by a parliament where Revolutionary Guardsmen and veterans hold 30 percent of the seats. My interlocutor ended by observing that it might be good to have the Guards' commander as president, for then at least it would be clear who was running the show. Some even seem to think that the men at arms might be better managers: after all, they managed to build nuclear projects despite sanctions.

Businessmen crave order, of course, and their potential regard for the man on horseback is hardly confined to Iran: witness the history of Latin America, or perhaps more to the point, the current situation in Pakistan, where a pro-business general enjoys Western allies. On the eve of elections, Iran seemed to be gripped with a Bonapartist fever. There were even veiled appeals to the legacy of Reza Shah, the autocratic modernizer who founded the Pahlavi dynasty in the early twentieth century and pulled the country by its bootstraps into the modern world. With the poor wanting jobs and business wanting effective governance, where was democracy? Conservative candidates boasted that they could work with the Supreme Leader and get things done. The reformists could guarantee no such thing. The pragmatic choice was to vote conservative.

BEFORE HE RAN FOR PRESIdent, Ahmadinejad had briefly served as mayor of Tehran, a position that he owed to his Revolutionary Guards backers. His stint in the mayor's office was an opportunity to re-package an inexperienced militant as an effective administrator. He fought public corruption, used the Guards' slush funds to give garbage collectors and bus drivers a raise, and built sports complexes and parks in poor neighborhoods. His patrons in the Guards helped him to ease Tehran's nightmarish traffic with new highways through previously restricted military zones. While Ahmadinejad has always been an ideological firebrand—through a career dedicated to doing the bully work of the Islamic Republic and following fringe radical groups and their extremist views—this is not what made him president. What mattered more were the signs that a president favored by the powers-that-be could succeed where Khatami had failed. And so Ahmadinejad transformed himself into the can-do, no-nonsense public executive.

The election results left the reformists devastated. Ahmadinejad finished second to Rafsanjani in the first round, but won the two-man runoff with a whopping 62 percent. And it was a high-turnout election, the kind in which the reform vote should have figured largely (Khatami's landslide in 1997 was the highest-turnout

The Lagging Hour

Girl on the bed,
what are you doing?
Isn't it time
you washed your hair
here in the sink
or got married?
The sink has a blue ring
dry as the rings of Saturn.
Look behind the curtain:
buildings and stars.
Isn't that your mother
and father walking away
on the road? Before
you were born, leaving
no footprints.

ERICA EHRENBERG

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election in Iranian history). While evidence that clerics and Guards officials had illegally helped Ahmadinejad was plentiful, there were no big protests. It was also clear that, even allowing for the irregularities, Ahmadinejad had done better than expected, and won by a genuinely wide margin in the runoff. As Tehran resident Mohammad Ghouchani, the influential editor of the leading reformist paper *Shargh*, put it, in 2005 "reformism lost to democracy."

AFTER THE ELECTIONS, THINGS did not look good for the reformists. Their two main factions took nearly a year even to agree to meet, with the goal of crafting a common platform. Meanwhile, the slide toward marginality has continued as the conservatives ride high, confident in the knowledge that they have beaten the reformists at their own game. The reformists now find themselves shut out of all political institutions, their hopes of using the presidency to open the system in tatters. Purges have driven professionals with reformist leanings out of the government bureaucracy. Their replacements are dour, dyed-in-the-wool hard-liners who lack experience and competence but burn with ideological zeal and a desire to make a reformist comeback impossible. The new culture minister has been especially virulent, proudly embracing book censorship. The nuclear watchdogs of the International Atomic Energy Agency have felt the chill wind too, as faithful hard-liners have replaced the familiar diplomats managing the nuclear negotiations.

The reformists in Iran are simply unprepared, intellectually and organizationally, to confront a conservative regime that enjoys the legitimacy of popular election. Ahmadinejad's populist rhetoric will likely lose its charm as his inexperienced government fails to deliver, but high oil revenues and the rally-'round-the-flag effect of nuclear tensions with the United States may disguise and forestall the effects of that disillusionment for some time. Appeals for liberal-democratic change will have a hard time being heard in a time of national crisis, more so now that the United States has announced plans to spend $85 million to promote democracy in Iran.

What, then, of the search for democracy in Iran? It seems to be everywhere and nowhere at once. There is no other country in the region more suitable for the nurturing of the sapling of democracy. Iranians want democracy, and they cherish democratic practices. But there is no simple and straight path to democracy in Iran. The battle lines are unclear, and as the elections last year showed, open political contestation has favored populist authoritarianism over democracy, albeit through the ballot box. Talk of democracy in Iran is rife, especially in the West; but the reality is that Iran now has a stable authoritarian regime, and there is no obvious way to dislodge it.

It will be difficult to make up for the opportunity that was lost during the Khatami years. Building a viable movement for full and politically secular democracy will take time. It needs organization and coalition-building; but above all it needs a convincing and uncompromising message—one that breaks absolutely with the legacy of the revolution and the nostalgia for its promise, and rejects any half-hearted attempts at reforming the theocracy. (There is an Islamic case, as well as a secular one, for a complete break.) In this task Shirin Ebadi can offer no guidance. Hers is the perplexed voice of a hopelessly in-between generation, torn between the intoxications of its youth and the realities of an ugly present. It will remain for others to see more clearly what she sees only through a glass darkly. ■

Richard A. Posner
The Courthouse Mice

COURTIERS OF THE MARBLE PALACE: THE RISE AND INFLUENCE OF THE SUPREME COURT LAW CLERK
By Todd C. Peppers
(Stanford University Press, 310 pp., $55)

SORCERERS' APPRENTICES: 100 YEARS OF LAW CLERKS AT THE UNITED STATES SUPREME COURT
By Artemus Ward and David L. Weiden
(New York University Press, 337 pp., $39)

WITHIN MONTHS OF each other, two remarkably similar books about Supreme Court law clerks have appeared. Both are the work of young political scientists; both are sober in tone, academic in style, meticulous in scholarship. In organization (basically chronological, but with some descriptive material at the beginning) and length they are almost identical, though *Courtiers of the Marble Palace* contains more historical and human particulars, and *Sorcerers' Apprentices* is more statistical and makes a greater effort at explanation. Both are excellent books only slightly marred by misleading titles, for their actual subjects are not "courtiers" or "sorcerers' apprentices," but nerdy professionals. The books should displace their gossipy (though pretty accurate) and unanalytical predecessors, Bob Woodward and Scott Armstrong's *The Brethren* and Edward Lazarus's *Closed Chambers*.

They are depressing to read, though. They put one in mind of Max Weber's image of the "iron cage" of modernity, in which the progressive bringing of all activities under the rule of reason—their subjection, in other words, to the rational methods of bureaucracy—robs life of its romance and its savor. For the implicit theme of both books is the bureaucratization of the Supreme Court. And this bureaucratization seems not to have improved the Court's performance, something that would have left Weber scratching his head in puzzlement.

Supreme Court justices were first authorized "legal secretaries" late in the nineteenth century, and they really were secretaries. Their evolution into law clerks was gradual. By the 1930s, however, all the justices had a law clerk in the modern sense of a law school graduate furnishing professional rather than secretarial assistance. The law clerks in that era were mainly research assistants

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and sounding boards, though they might also summarize petitions for certiorari for their justices. Virtually all opinion-writing was done by the justices themselves. Most of the clerks were fresh out of law school, and generally there were only a few applicants for each clerkship. Justices did not encourage applications, and often delegated the picking of their clerks to friends or law-professor acquaintances.

Today each justice has four law clerks (though the chief justice is authorized five), each of whom has had a year of clerking on a lower court under his or her belt and sometimes more extensive professional experience. Sometimes one of the clerks is designated the justice's chief clerk to assist the justice in supervising the others. Judging by my own experience as a Supreme Court clerk, clerks work longer hours today than they did forty years ago, even though the caseload per clerk is much lower. The hypertrophy of staff is a general characteristic of modern American government. It has the aspect of an arms race. If one justice has a large and able staff, other justices may feel placed on the defensive and want to catch up, even though the principal effect of the larger staffs may merely be longer and superficially more erudite opinions.

The clerkship positions have become highly coveted. There are many more, and many abler, law school graduates than there were in the 1930s, and they are falling over each other to become Supreme Court clerks. No one is hired without an interview, in advance of which the applicant studies the justice's opinions and seeks tips from the justice's former clerks on how to make a good impression. The applicants, much more carefully vetted than in the old days, are genuinely an elite, who after serving their clerkships are offered huge signing bonuses by leading law firms.

Clerks draft memoranda circulated to the entire Court advising on whether to grant petitions for certiorari. Often they write bench memoranda, which can run to fifty pages or more, for their justice in advance of oral argument of the handful of cases in which the justices grant plenary review. Except for Justice John Paul Stevens, who writes his own first drafts of opinions, law clerks write the first drafts of their justices' opinions. (According to *Courtiers*, Stevens's clerks rewrite his drafts extensively, thus producing an inversion of the normal relation of clerk-author to justice-editor. In another inversion, Justice Harry Blackmun, a genuine eccentric, left the opinion-writing to his clerks after his first years on the Court and concentrated on cite-checking their drafts. He was by all accounts an awesome cite-checker.) Some justices rewrite the clerks' opinion drafts extensively, others little. *Sorcerers' Apprentices* estimates that 30 percent of the opinions published by the Supreme Court are almost entirely the work of the law clerks; and as they are the primary drafters of most of the other opinions as well, probably more than half the written output of the Court is clerk-authored.

THE CLERKS HAVE THE USE OF excellent computerized legal research tools, and their efficiency is further boosted by the device of the "cert. pool." Until the early 1970s, the law clerks prepared certiorari memos for their individual justices, a time-consuming task. A law clerk whose justice belongs to the pool (Stevens is the lone holdout) writes a memo for all the justices in the pool. So instead of nine memos being written in each case, there are only two—the pool memo and a memo written by one of Stevens's clerks. The pool memos tend to be longer and more careful than a memo for a single justice, because they are written for a larger audience and one that the law clerk does not know as well, but *Sorcerers' Apprentices* presents convincing statistical evidence that the aggregate time that law clerks spend on certiorari memos has fallen considerably because of the reduction in the number of memos written by each clerk.

Now here is the remarkable point, which is not to be found in either book (perhaps the authors did not wish to be regarded as Court-bashers): despite the substantial quality-adjusted increase in the Court's principal staff, the Court's decisional output has not increased. This may seem to contradict the basic laws of economics. It is true that the number of petitions for certiorari (and other applications for review) has grown substantially since the 1930s (from about 900 a year to about 7,500), and each one has to be decided. But most of the growth has been in petitions filed by indigents, mainly prisoners, who do not have lawyers, and most of these petitions are frivolous. The "paid" docket has grown from about 800 petitions a year to about 1,700, a mere doubling that the cert. pool alone could have comfortably accommodated with no increase in the number of clerks.

Owing to the complex jurisprudence of capital punishment that the Supreme Court has developed, motions for stay of execution have doubtless increased in number and in length since the 1930s, even though far fewer people are being executed. But the increase in the Court's dispositions of petitions for certiorari and motions for stay has been offset by the steep reduction in the number of plenary decisions (that is, decisions in cases in which the Supreme Court has granted review): from an average of 183 in the 1930s to an average of 84 in the 2000s. The average opinion is longer today, and there are more dissenting and concurring opinions, and so the total word output of the Court is greater; but whether this spells improvement may be doubted.

But aren't the cases more difficult today? I don't think so. Although American law is more complex than it was in the 1930s, this is primarily because of developments in areas of law—securities regulation, antitrust, taxation, federal pension law, intellectual property in high-technology areas such as computer software and pharmaceutical drugs, and complex financial and other commercial transactions—that the Court tends to shy away from in favor of constitutional and criminal cases. (This aversion may reflect the tastes and the aptitudes of the law clerks, whose certiorari memos influence the justices' decisions to grant or deny review.) And constitutional cases are often "difficult" in the sense of eluding satisfactory resolution. They are not inherently more complex. Instead they are indeterminate, as a consequence of the vagueness and antiquity of the constitutional text, and of the emotionality

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and political sensitivity that so many constitutional cases engender.

Of course, to measure output just in quantitative terms is seriously incomplete. One must also adjust for quality. This is extremely difficult to do in the case of Supreme Court decisions, and neither of these books attempts to do it. To ask whether the fraction of "correct" decisions is greater today than in the 1930s would be fatuous, because there is no benchmark for determining the correctness of a Supreme Court decision. Comparison over time is particularly difficult, because issues are in constant flux. Still, one can apply quality-related criteria, such as clarity, brevity, guidance provided to the lower courts, and candor in explaining the true grounds of decision, to the opinions in the two eras.

When one does this, one is not likely to find a dramatic, or perhaps any, overall difference in quality. Today's opinions are longer—a dubious virtue. There are more separate opinions, most of which are ephemeral. Today's opinions are more polished, more "scholarly," and more carefully cite-checked, but these are modest virtues. Neither judges nor their clerks are scholars. The scholarly apparatus of judicial opinions belongs to the rhetoric rather than the substance of judicial decision-making.

Could it be that the justices were abler in the 1930s than they are today, and so they needed less staff? There were some very distinguished justices back then, notably Brandeis, Cardozo, Hughes, and to a slightly lesser degree Stone. (Holmes and Frankfurter served only briefly during that decade.) No current Supreme Court justice has achieved the stature of a Brandeis, but the average quality of the justices is no lower today than it was then. Several of today's justices have very strong academic and professional backgrounds.

Although today's Supreme Court opinions are no more poorly written on average than opinions from the era in which the justices wrote their own opinions, there is nonetheless a loss when opinions are ghostwritten. Most of the law clerks are very bright, but they are inexperienced; and judges fool themselves when they think that by careful editing they can make a judicial opinion their own. If an editor changes thirty words on a page that contains three hundred words, the page will look heavily edited because handwritten changes are larger than type, but only ten percent of the words will have been changed, and many of the changes will be inconsequential. It is also possible that the cert. pool, which reduces the diversity of views presented to the justices concerning whether to grant or to deny review in a particular case, is distorting the justices' choices of which cases to hear.

In sum, a large quality-adjusted increase in inputs, having mainly to do with the increased quantity, quality, and efficiency of the law clerks, seems not have yielded a quality-adjusted increase in output. I suggested earlier that such a result contradicts fundamental laws of economics, but of course I was thinking of business firms, which will cut back if they discover that they are adding costs without generating commensurate increases in profits. The Supreme Court is not a business, and government agencies are not subject to market discipline. Congress controls the Supreme Court's budget, but respect for the Court as a co-equal branch of government (with Congress and the president) has assured generous funding for it; and anyway the Court's budget is such a small fraction of the overall $2.7 trillion federal budget that if the justices want more law clerks or more up-to-date computer software, Congress will not begrudge them these things. It will not insist that the justices "manage by the numbers" and thus demonstrate that an additional expense will add greater value to the justices' work product.

The question remains why the Court's inputs have grown. *Sorcerers' Apprentices* argues plausibly that the increased number and quality of the law clerks are mainly the unintended consequences of administrative measures beginning with Chief Justice Hughes's innovation of the "dead list." Until then, all petitions for certiorari were discussed at the Court's weekly conference. The chief justice would first summarize the petition and give his view on whether it should be granted, and the other justices would respond and then vote to grant or deny. When the chief justice decided that it would promote efficiency for him to circulate a list of cases that he thought should be denied without discussion at the conference, the other justices, deprived of his summary, had to evaluate the dead-listed cases on their own, and they turned to their clerks. The clerks thus ceased to be merely research assistants.

Clerk "networking," which enhanced the clerks' individual and collective influence, began when the justices moved into their new building, completed in 1935, in which each justice and his law clerk had offices. Until then, the justices had worked out of their homes and provided space there for the clerk to work, and so the clerks were dispersed and had little contact with one another. In 1947, in another change that enlarged the clerks' role, Chief Justice Vinson decided that each justice should be assigned the same number of majority opinions to write. Until then, faster justices had been given more assignments. The slower justices, now more heavily burdened with writing assignments, began delegating opinion-drafting to their law clerks. They also wanted an additional clerk, and Congress obliged. Finally, with the advent of the cert. pool in 1972, the law clerks began spending less time on petitions for certiorari, and this freed up their time to do more opinion-writing.

As the number and the experience of law clerks rose (increased competition for clerkships was one of the things that made previous clerkship experience a prerequisite—the justices could be pickier when they were fishing from a larger pool, and could thus insist on more experienced applicants), the clerks' ability to write good opinions increased. The justices began to conceive their own role as that of editor, not author. Even experienced writers find writing a first draft burdensome, and so with a competent ghostwriter at hand the temptation to delegate that drafting can become irresistible. The more clerks a judge has, moreover, the more time he must devote to recruitment, orientation, supervision, reading memos and other materials produced by the law clerks, and talking to them, and therefore the less time he has for writing opinions.

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ANOTHER CONSEQUENCE OF the justices' burgeoning staffs has been an increased concern, amounting to an obsession, with secrecy. I do not remember from my time as a clerk for Justice William Brennan anyone saying anything about confidentiality, though it was understood that one was not to gossip about the justices or discuss pending cases with outsiders. Now there is an elaborate code of conduct for clerks, enjoining them to utmost confidentiality, as if they were handling national-defense secrets.

But leaks are a function mainly of the number of the secret-bearers, and cannot be stifled by rules. The effect of the rules is merely to delay the leaks. The clerks delayed blabbing about the internal machinations in *Bush* v. *Gore* for several years, but blab they eventually did. And the justices' official papers are increasingly voluminous (elaborate documentation is one of the defining characteristics of bureaucracy) and increasingly available to scholars, which works against the institutional desire to zip the law clerks' lips. *Sorcerers' Apprentices* makes especially good use of Justice Lewis Powell's extensive papers. Powell modeled his judicial role on that of the senior partner of a small law firm. It seems that rather than write judicial opinions, he wrote memoranda instructing, complimenting, and "mentoring" his law clerks. Chief Justice William Rehnquist was candid in acknowledging publicly the very large role played by his law clerks in the opinion-writing process.

Sorcerers' Apprentices endorses a proposal that has no chance of being adopted, though it seems as sensible as it is provocative. It is that the Supreme Court publish the pool cert. memos. There is no published statement of the reasons for denials of certiorari, and this deprives the bar of valuable information concerning the Court's work. The reasons given by a law clerk for wanting to deny certiorari in a case will sometimes differ from the reasons that persuade six justices to deny (six because only four votes are required to grant it). But there would be fewer futile petitions—the Court grants only a little more than 1 percent of the petitions—if the bar had a better sense of the reasons that the Court's key staffers give for turning petitions down. There might also be fewer denials.

The Court's preoccupation with the confidentiality of its internal workings makes an illuminating contrast with the English judicial tradition (now in rapid decline because of caseload pressures) of "orality." Everything English judges did was to be done in public, so that their performance could be monitored. They did not deliberate, they had no staff, they did not have libraries, they did not read briefs: on the bench they read the cases, the statutes, and the other materials that the lawyers handed up to them. (So appeals might take days to argue, which is why the tradition has eroded.) Our Supreme Court (imitated in this by most other American courts) has gone to the opposite extreme, imposing—or attempting with mixed success to impose—a regime of secrecy on the judicial decision-making process.

The standard argument is that secrecy is necessary for candid communications among the justices and between the justices and their clerks. But judicial decisions, unlike business and political and military decisions, are supposed to be based, and rightly so, on reasons that can be stated publicly without embarrassment. *Sorcerers' Apprentices* quotes some disreputably partisan clerks' memos in "hot" cases, for example involving abortion. If publicity deterred clerks from writing such memos, the nation would not be the loser.

Of course clerks must not leak information about cases not yet decided; but this is the only secret-keeping that should be required of them. As for deliberations among the justices, they are by all reports stilted and brief. Were transcripts of their deliberations to be published, the only embarrassment would be that the American public would realize that the Supreme Court of the United States is at bottom merely a committee of able lawyers. A bit more of the mystique of judging would be chipped away. It would be a further step toward the disenchantment of the world that Weber foresaw with prescience and regret, but it might not be a bad thing. ■

David Thomson

When Looks Could Kill

AVA GARDNER: "LOVE IS NOTHING"
By Lee Server
(St. Martin's Press, 608 pp., $29.95)

HOW IS IT THAT, AS LATE AS 2006, a high-minded magazine can still find space for a couple of thousand words on Ava Gardner, squeezed in between, say, a full account of the latest Proust translation and a critical analysis of torture and American law? Is it that men are always feeble-minded enough for there to be a business in it—getting a look for a few cents, the old Nickelodeon idea? I mean men as described in the blurb to Lee Server's book: "It is said men literally had to support themselves against buildings when [Ava Gardner] walked by."

Now, I'm not claiming this, and I don't think Server says it; but it is the sort of hope that book blurbs are given to—and one has to admit that, especially in tropic climes, where the cement is not all it ought to be, there is a good deal of lolling against structures by men who have nothing else to do. And so it is that, more than fifteen years after her death, and largely impervious to the relentless and anonymous horde of very beautiful women that just keeps coming, we have a 608-page book about this fabled North Carolinian beauty—but only sixteen pages of stills!

Who could deny the legendary appeal in the story of a sharecropper's daughter from the back country who went all the way to *Pandora and the Flying Dutchman*, *The Barefoot Contessa*, and *Bhowani Junction* because a still photograph found its way to the New York offices of Metro-Goldwyn-Mayer, where a genial man named Al Altman (not content with discovering Joan Crawford) called in Ava Gardner and had her pose and stroll around a tiny vestigial set and then shipped the screen test to the West Coast, where homely, squat men in dark rooms studied it and—having reached out for

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something solid to steady themselves—whispered, "Get that girl out here!" And so it happened, on a seven-year contract, starting at $50 per week. This was 1941, a war was coming, and so on.

With the warmest will in the world, the official lechers at MGM in the early 1940s determined that while Ava Gardner took a very arresting picture, she seldom bothered to act and had difficulty being understood outside the North Carolina back country. In those years, 1941 to 1945, or from the age of nineteen to twenty-three, when beauty like hers is most sumptuous, Ava Gardner had only brief spots in several studio pictures, and usually without credit. Not that she despaired or wasted time. With carnal splendor on her hands, she passed the time by marrying Mickey Rooney for a few months in 1942–1943. Rooney was a sex hound himself, but it always got him: Ava, in her panties, sauntering around the house saying, "Let's fuck." His career slid, but he recorded for posterity that she was unique "down there," and like "a little warm mouth."

Mickey was twenty-two, just two years older than Ava, and one of the most popular and highest-paid stars in the world, as established by the Andy Hardy pictures, his several teamings with Judy Garland, and his performance as Young Tom Edison. It is true that by the time it was over he had married an awful lot, but Ava was his first wife, and she made such inroads on his bounce and freshness that there were executives at MGM complaining that he looked as old as Judge Hardy. Her conjugal darkening of the Mick was perhaps the best early tribute to her spell as a lover. But a couple of years later, she found another husband, Artie Shaw, the fascinating big-band leader and self-declared mastermind, nearly as beautiful as Ava and certainly as sexually notorious, but every bit as famous for being an intellectual prick.

We still don't know what Ava did with Mickey and Artie, and despite Lee Server's diligence over six hundred pages, he doesn't know either. A root consequence of that is to stress the gulf, in her heyday, between Ava's true wanton self and what she could get away with in her pallid films. What brought Ava to life on screen was the postwar blooming of noir: first in a small picture, *Whistle Stop*, and then as the treacherous lover Kitty Collins opposite Burt Lancaster in *The Killers*, she became a famous face. *The Killers* still works, in its skillful opening out of the Hemingway short story (where the two killers come looking for Ole Anderson) into a fatalistic reprise of time nagged on by an insurance agent's urge to find the missing money. It was directed by Robert Siodmak, a minor master, and wondrously shot by Woody Brendell, but much of the writing was handled by John Huston, the kindly womanizer and deft storyteller who always had it bad for Ava.

COURTESY ST. MARTIN'S PRESS

***Burt Lancaster and Ava Gardner in* The Killers**

The Killers may still be Ava's best picture; it is the one where she is least encumbered by the need to act. All we have to do is soak her up and cross our fingers. She photographs like a dream, and leaves the middle-class audience to trust that she is trouble and dangerous to know. The film turns on how far Burt Lancaster, her chump, can't just fuck her and dump her; he has to fall in love, and so he furnishes one of the great secrets of noir—that the more beautiful a woman is, the more unreliable she is going to be. Viewers of this film can still see, I hope, the kind of misogynistic panic that existed within America's most hard-boiled genre—a dread of exultant sex and of women who put nothing in life beyond its pleasure (not even homeland security).

That was a clue to her gaze. She was often called "gypsy" or "Spanish-like." Server notes the way in which white trash in our race-addled country wonder about a dash of coffee in their au lait. He mentions Elvis, and he could have read Faulkner. But he misses Ava's feeling for color or mixed blood in friends and parts—to say nothing of her odd name, which came from a beautiful aunt and the mist of palindrome. (Her given name, now forgotten, was Lucy Johnson.) She had ravishing looks; but it was the way that focus seemed fixed on the distant or the ultimate, rather than on anything immediate, that was most seductive. She never seems to have known what it was about.

She made bad pictures: an almost comic shot at Dostoyevsky, with Gregory Peck, in *The Great Sinner*; *My Forbidden Past*, with Robert Mitchum; *Pandora and the Flying Dutchman*, pretentious kitsch in which that gaze seems to see the inward O of surreal desire; Julie in *Show Boat*, though she was hurt that they didn't use her singing voice; a dreadful Hemingway story, *The Snows of Kilimanjaro* (with Peck again); *Mogambo*, John Ford's re-make of *Red Dust*, where Ava took the Jean Harlow part, Grace Kelly was Mary Astor, and Gable was Gable again; Guinevere in *Knights of the Round Table*; and *The Barefoot Contessa*. Maria Vargas in that film was a role sought by many actresses. Ava got it because of the "gypsy" thing and because she had a streak of the barefoot. (But only a streak: loaned out by MGM for $200,000, she received just $60,000. There is always missing money.) But despite the attentions of writer-director Joseph Mankiewicz and the great Technicolor cameraman Jack Cardiff (who had also shot *Pandora and the Flying Dutchman*), the picture is a foolish, verbose melodrama. Against all expectations, Ava got her Oscar nomination not for that, but for *Mogambo*.

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By the time of *The Barefoot Contessa*, Gardner was thirty-two, and well aware that her looks were in decline because of natural aging, the application of vodka and gin, and her most abiding melodrama, the one she called Francis. Server reckons that Sinatra and Gardner had met often at Metro in the 1940s without anything magnetic occurring. When he saw her once with Rooney, he apparently leered and asked, "Why didn't I meet you first?"—as if such priorities meant anything to him. Then one night they both quit a party at Zanuck's, took a bottle in a car, and drove out into the desert. They fired guns and—like slaves to scenario—they got it on. They were both drunk, and sobriety was their enemy ever afterward.

They married in 1951 and planned to divorce three years later, except that in their sadomasochistic way they stayed loyal until her death. (By now, of course, the saga has been unloaded in several biopics. Marcia Gay Harden was OK as Ava; she got the toughness, the instability, and the lust. It's just that she looked like 10 percent of Ava.) They needled each other. He was ruined by guilt over the loss of his Catholic marriage. He was also the wreck of his own stardom, in urgent need of rebuilding—but once he was back, after Maggio and meeting Nelson Riddle, he was more arrogant than ever. They fought, and they were about the same weight. Still, it was she who said that even if he was only 110 pounds, ten of that was cock. A goddess still couldn't say that in an American picture; but it may be the last thing history recalls about Sinatra. And just as he was gripped by insecurity, so he treasured her ease until the end. As long as they were apart, Sinatra was fond and caring. There is no doubt that he wired her money in her forlorn last years. Too little! she sneered. You thank God that they never had a kid.

The best opportunity that Gardner had came in 1956, with George Cukor's adaptation of the John Masters novel *Bhowani Junction*, in which the lead is an Anglo-Indian girl, a half-caste, pursued by several men. Gardner was never more beautiful, and Cukor did remarkable work in the difficult circumstances of India and Pakistan. The studio—MGM again—hated the picture, suspected that its fuck-around heroine was unsympathetic, and hacked the film to pieces. Server makes a good case for the tragedy of what befell the film, but he never really persuades us of how deeply Ava felt or how much she knew to fight for her career. In life, she was a brave woman and her own boss, but in pictures she did as she was told and relied on luck.

The Sun Also Rises was a travesty, but it encouraged her taste for bullfighters. *55 Days at Peking* was ruined by Nicholas Ray's illness and her own loss of belief. *The Night of the Iguana* and *The Life and Times of Judge Roy Bean* were further gestures from John Huston, and when he cast her as Lily Langtry in the latter—she has just one scene—it was out of fondness for an uncertain career, but one that he had started, in the way that a guy might light a match. There were other love affairs, most notably the ugly violence that tied her to George C. Scott—he played Abraham and she was Sarah, for Huston again, in *The Bible*. Scott was a far more serious actor, and Gardner was way over the hill. But he was infatuated to the point of madness by her, so he beat her up if she was disobedient or imperfect. (Years earlier she had been the violent one in a ruinous bond with Howard Hughes.) She was only sixty-seven when she died of pneumonia, living in London. She had sold some jewelry and tried a tell-all book to make ends meet. But she had lupus and suffered a stroke. When he heard of her death, Sinatra went into retreat for a night and a day.

Ava Gardner had countless lovers, and it is likely that not even six hundred pages allows Server to list them all. As a book, this is a lot less compelling than his revelatory study of Robert Mitchum; but a male author, I daresay, took heart in discovering the ways in which Mitchum did care and just masked his artistic soul. Yet Ava Gardner had really given up the ghost: she really didn't care, or care to be cared for. Beach boys, bullfighters, actors, and everyone else fell for her in the way her reputation ordered them to fall for her. They glimpsed a battered honesty and a country-girl simplicity. But there was no reaching or holding this woman. She knew her own curse: that she would have to grow older and plainer. So she drank and insulted arrogant men until they slugged her. After that, she behaved according to the country wisdom—that her beauty, coming from nature, belonged to everyone and to no one. ■

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DAGESTAN DIARIST

Enemy at the Gates

THIS WILL ONLY TAKE FIVE minutes. We just have a few more questions. You haven't done anything wrong. We're doing this to protect you. That's what they told me, every hour, for three days.

THEY PICKED ME UP AT A ROADSIDE checkpoint in Khasavyurt, a small town in the republic of Dagestan, in Russia's troubled, Muslim south. It has been said that the brutal, twelve-year war in Chechnya is spilling into republics like Dagestan. Attacks by Islamic militants against authorities occur there almost weekly. Over the past year, I have reported from nearly all the republics that border Chechnya. On this trip, I wanted to see if the story in Dagestan was as simple as Russia has spun it—bad Muslim insurgents versus good Christian soldiers. Or, more likely, if Russia's own repressive and brutal counterterrorism tactics are only creating more violence.

I FIGURED MY INTERROGATORS JUST wanted to scare me, to convince me not to write critically about Russia anymore. They held me in an office and refused to let me leave. The uniformed man in charge yelled a lot. He wanted me to think I was there illegally. "This visa was issued by Moscow," he would say, flipping through my passport. "But you are in Dagestan. Do you know how dangerous it is here?" At first, I communicated in rudimentary Russian. Later, we were joined by an English teacher who had translated for me earlier that day.

AS THE NIGHT WORE ON, A NEW CROP of interrogators arrived—plainclothes men who would not give their names. Their questions took on a menacing tone. Who do you really work for? they asked. Are you an agent of the U.S. government? Are you here to start a revolution like in Ukraine and Georgia? Do you really believe in democracy? It was late. I was exhausted. I sent a text message to a relative in New York. "Call the Committee to Protect Journalists," I wrote. "Things are bad." Then I started to cry.

BY 4 A.M., I HAD PROVIDED MY ITINERary in Dagestan: every village I visited, the people I interviewed. My interrogators knew I had no place to go. They offered me a ride back to Dagestan's capital, about an hour and a half away. I declined. I begged the interpreter to help me find a place to stay. He took me to his colleague's home, and I managed to sleep for a few hours.

LATER THE NEXT MORNING, I HEADED back to the capital with a big, brash opposition journalist who had accompanied me on interviews earlier that week. At a checkpoint, authorities entered our car and ordered us to drive to police headquarters. I looked behind us and saw two more cars full of goons. After an hour of arguing, my interrogators agreed I could have my own interpreter—my trusted friend, Andrei—and also a lawyer during the next round of questioning.

AGAIN, I WAS HELD FOR HOURS IN A locked office. To pass the time and stay calm, I applied hand cream to each of my ten fingers. My interrogators said they wanted more names, more phone numbers. There were a lot of papers to sign. They produced a phony-looking document that had arrived by fax. It said I had information about a terrorist attack in Chechnya, a place I have never been. My interrogators said the document required them to search the home where I was staying. A gang of 20 goons descended upon the hostess. I watched as they took my laptop, my tapes, my notebooks, my camera, and my phone. The authorities said I was "free to go," but they kept my passport and implied I would get "hurt" if I tried to leave Dagestan. When the U.S. Embassy reached officials in Dagestan, they were told I had been released. That night, I slept for a few hours at Andrei's house.

ON THE THIRD DAY, I WAS SUMMONED again. The prosecutor from Chechnya is here, the authorities said. If you don't come down for more questioning, we'll have to take you to Chechnya. I understood the threat. People are tortured, kidnapped, and killed every day in Chechnya. The "prosecutor" was rotund and Slavic. His ID said he was Chechen, but I heard him say, in Russian, that he was from "far away." He was more professional than my previous interrogators. He wore a clean blue uniform and used a laptop.

HE SHOWED ME PHOTOS OF TERRORISTS—bearded men in camouflage with guns. He played a tape recording of me on the phone. He insinuated I was talking to the bearded men. He asked if I had ever provided money or "electronic materials" to terrorists. I laughed and told him no. I wasn't scared anymore. My interrogators' attempt to make me believe in my own guilt had failed. The prosecutor gave me my passport. I asked when I could go home. He said I could leave Russia "when the court is finished checking my things." The goons hinted that it could take two more weeks. But I wasn't going to wait. The following day, my lawyer and I took a car to the airport and flew to Moscow. The next day, I left for the United States.

NOW THAT SOME TIME HAS PASSED, IT'S clear that my detention was one small move in a continuing effort by Russia to muzzle the press and demonize the West. Just after the Beslan school siege by Chechen militants in September 2004, Russian President Vladimir Putin hinted in a speech that the West might actually be aiding terrorists as a way to destabilize Russia. Since then, the Kremlin has claimed that Moscow is awash with Western spies and has clamped down hard on nongovernmental organizations that receive funding from the West.

ANALYSTS CALL THIS PUTIN'S "ENEMY at the gates" strategy—a nod back to Soviet times. It allows Putin to cast his nation's problems—including the violence in Chechnya and Dagestan—as products of outside intervention, rather than admit that they result from his own failed policies. Russians apparently believe the hype. Just last month, Russian TV reported that a panel I spoke on—sponsored by the Jamestown Foundation, a Washington think tank—was promoting terrorism. For me, the ordeal is over, but for our two countries, a new and chilly conflict may just be beginning.

KELLY MCEVERS

Kelly McEvers is a recent fellow with the International Reporting Project at Johns Hopkins' School of Advanced International Studies.

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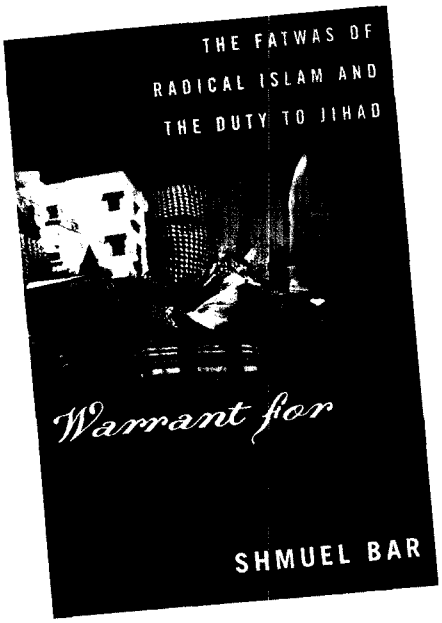
FROM THE NEW HOOVER STUDIES IN POLITICS, ECONOMICS, AND SOCIETY SERIES

Critical Reading from Hoover

Insight into Islamist terrorism



"Shmuel Bar has written one of the most important and compelling books in recent years. If you want to understand Islamic terrorism and jihad, this is the book to read. He has written an absolutely brilliant page-turning analysis of the dynamics underlying radical Jihad today—and for policymakers, analysts and the public, Warrant for Terror *will provide you insights that few other books even dare try. This is one of the best books I have ever read on the dynamics of jihad and fatwas. Read it to be educated and to truly understand. Ignore it at your peril. Dr. Bar has performed a wonderful public service by compiling and analyzing the fatwas for us. This book is a benchmark in the literature on jihad."*

—Steven Emerson,
Executive Director, The Investigative Project on Terrorism, and author of American Jihad: The Terrorists Living Amongst Us.

Warrant for Terror *examines fatwas—legal opinions concerning whether a given act under Islam is obligatory, permitted, or forbidden—as instruments by which religious leaders impel their believers to engage in terrorism. Fatwas, coming from all over the Muslim world, have played a central role in terrorists' determining to undertake jihad. Shmuel Bar examines fatwas' religious, legal, and moral logic and the depth of their influence. He delves into the justification for declaring jihad; the territory in which jihad should be fought; whether women and children may participate; the legality of killing women, children, and other noncombatants; the justification for killing hostages and mutilating their bodies; and the permissibility of diverse tactics and weapons, including suicide attacks and weapons of mass destruction. Bar raises a number of provocative questions about the proper policy for the West in the face of the threat posed by Islamic extremism.*

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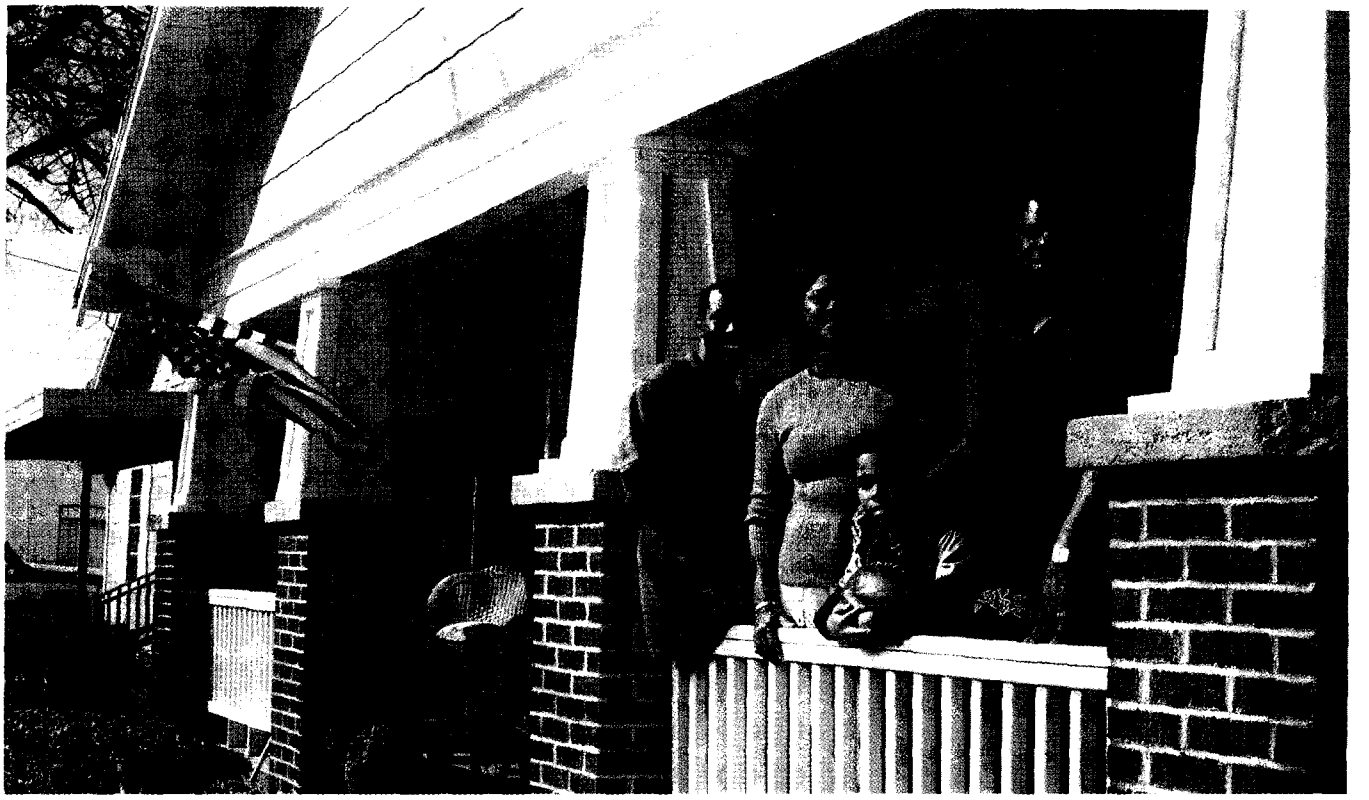
TV FREEDOM



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